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| **From:** | Jagmohan, Mahendra |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Comments on Proposed Form 990 and Associated Schedules |
| **Date:** | Friday, September 14, 2007 11:23:26 AM |
| **Attachments:** | Proposed Form 990 and Associated Schedules.pdf |

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Dear Sir/Madame,

Please find attached comments on proposed form 990 and associated schedules for the
Mount Sinai Hospital (EIN 13-1624096) and
Mount Sinai School of Medicine (EIN 13-6171197).

Thank you again for the opportunity to comment on the forms.

Mahendra Jagmohan
Senior Director of Finance
212-731-3083
Mahendra.Jagmohan@mountsinai.org

<<Proposed Form 990 and Associated Schedules.pdf>>

The Mount Sinai Hospital
One Gustave L. Levy Place
New York, NY 10029-6574

# THE MOUNT SINAI HOSPITAL AND MOUNT SINAI SCHOOL OF MEDICINE

## COMMENTS ON PROPOSED FORM 990 AND ASSOCIATED SCHEDULES

**September 2007**

The Mount Sinai Hospital (the "Hospital") and Mount Sinai School of Medicine (the "School"; and together with the Hospital, "Mount Sinai") welcome the opportunity to comment on the Internal Revenue Service's (IRS) Proposed Form 990 (990) and associated Schedules. We will be identifying specific points raised in the 990 and offering our reactions, commenting specifically on the Core Form, Schedule H, Schedule I, Schedule J, Schedule K, and Schedule R. In particular, we will be highlighting our concerns with elements of Schedule H, especially its focus on elements outside of the community benefit standard and the exclusion of bad debt from charity care calculations. Overall, we believe the proposed 990 creates a significantly increased administrative burden for tax-exempt hospitals and would respectfully request at least a two-year transition for implementation of any proposed changes.

**Background on Mount Sinai and its commitment to community benefit**

The Hospital was established in 1852 and is a major acute care teaching hospital located on the upper east side of Manhattan with a division in Queens. As a tertiary care facility with 1,406 certified beds, the Hospital draws patients from the surrounding economically and racially diverse communities, as well as from around the country and the world. The Hospital has a medical staff of approximately 2,000 full-time and voluntary physicians who treat nearly 58,800 inpatients and 605,000 outpatients each year. The Hospital provides a comprehensive range of medical and surgical services.

The School was founded in 1968 as a teaching and research facility and is closely affiliated with the Hospital. The two institutions share a four-block campus. The School conducts research and clinical programs and educates physicians, scientists and medical students for careers in the practice of medicine, the delivery of health care and the pursuit of medical research. Its students can participate in M.D., Ph.D. and various Masters degree programs. For the 2006-07 academic year, the School has 487 medical students and 221 graduate doctoral students. Its residency and fellowship program trains more than 689 residents and fellows in 67 programs approved by the Accreditation Council for Graduate Medical Education.

Mount Sinai is committed to the tenets of tax-exemption and community benefit, just as we are dedicated to the provision of charity care and diverse community services. We take enormous pride in the value our institutions bring to their respective communities through the provision of health care, education, research, health promotion and social services

**Mount Sinai requests a two year transition, at a minimum, before the new 990 is used.**

For all of these reasons, we understand and appreciate IRS's review of the tax-exempt sector generally and tax-exempt hospitals specifically. Like the IRS, Mount Sinai and its members want the tax-exempt sector to function as efficiently and purposefully as it can, and we are grateful for this opportunity to comment. However, Mount Sinai has concerns about the IRS's proposed 990 and associated schedules.

Despite the stated goals of the 990 project, we do not believe that the proposed forms collect the type of meaningful information that might improve transparency for the general public, do not accurately reflect diverse organizations' operations or otherwise promote compliance. Contrary to the IRS's assertions, these proposed forms radically increase the burden on filing entities. Many large hospitals and hospital systems will need to fill out as many as 14 of the associated schedules and the majority will have to file roughly 8 – 10. Moreover, underlying the proposed Schedule H is a dramatic philosophical shift in the legal standard applicable to tax-exempt status. We have significant reservations about such a change and about various aspects of additional schedules.

To that end, we respectfully request at least a two year transition before the new forms are implemented and ask that revised materials be made available to the public through another public comment period. Tax-exempt entities would then have an opportunity to comment on the IRS's new proposals and to prepare for requisite systems changes to meet reporting requirements. As a suggestion, the IRS could release the next revised draft with full instructions in 2008, and provide another 90-day review period, with a final form release by December 31, 2008. We look forward to a continuing dialogue with the IRS on behalf of our members, and we hope that the following ideas will be helpful in making necessary changes to the proposed forms at this point in the process.

For ease of understanding, Mount Sinai will identify the specific forms and lines on which it is commenting throughout this document. Any global comments will be identified as such.

## CORE FORM

**Broadly speaking, Mount Sinai is concerned that the Core Form does not allow for any distinction between organizations, regardless of considerable differences in size, budget, mission and geographic location.**

The Core Form, particularly the first page, is seemingly designed to create a snapshot of the organization for easy public comprehension and comparison. However, significant and appropriate differences exist among tax-exempt organizations around the country. We urge the IRS to consider a method of adjusting or segmenting responses based on organization size or other factors. Otherwise, larger, more complex urban organizations like ours will be viewed out of context and thus, perhaps unfairly. This concern underscores several of the following specific remarks regarding the Core Form, representing our most significant reservations.

Part 1, Line 4: **Mount Sinai suggests that the term "independent" be better defined** to exclude anyone who receives a regular salary or other direct, personal payment from the organization. Under this definition, board members who work for firms or companies that may be engaged by the organization yet who do not directly receive payment for such work would still be considered independent, and we believe this is an appropriate distinction. While we certainly agree that tax-exempt entities should not be governed for any individual's personal gain, we note that a person could theoretically lose her "independence" vis-à-vis a hospital if her law firm performed services for the institution, even if that person properly recused herself from any relevant board decision-making and did not herself receive payment from the entity for the work. This is only an example, but similar possibilities abound. It would thus be helpful to define more precisely what it means to be independent.

Part 1, Lines 6, 7, 8, and other discussions of compensation: **Mount Sinai recommends acknowledgment of or adjustment for regional variations in reporting and evaluating compensation**. Labor costs and executive salaries in the New York City region are among the highest in the nation in all industries. Our institutions must pay competitive salaries to attract the types of accomplished, high-quality leaders necessary to effectively run some of the most sophisticated medical centers in the world. Even the federal government acknowledges the City's higher costs. This is demonstrated by our region's Medicare wage index, the index used to adjust Medicare payments for regional variation in wage levels, which is .32 percentage points higher than the national average. New York City entities should not be penalized, either by the IRS or in the court of public opinion, because of these necessary expenditures.

Mount Sinai develops its executive compensation packages in a deliberate, thoughtful manner, utilizing processes such as outside compensation expert review as well as Board of Trustee review to ensure that total compensation is consistent with our tax-exempt status. We should not be asked to reduce our salaries to match those that may be attractive in different industries located in far less expensive region of the country, yet we wonder whether there will be explicit and implicit pressure to do so based on unadjusted and misunderstood compensation reporting. We respectfully request the IRS to take these issues into consideration.

- **In addition, Mount Sinai suggests that $100,000 is too low a threshold for purposes of Line 6**. Again, entities in New York City must pay such a salary on a regular basis to attract the talented staff and executives we need throughout our complex organizations. Under this threshold, we will be reporting a significant number of employees who exceed the $100,000 bar. There is nothing inappropriate about that fact. Sophisticated, urban institutions should not be unfairly compared to small organizations in rural areas, for example, that do not need to offer similar salaries. We propose that the $100,000 threshold should vary based on the size and budget of the reporting organization.

- Part II, Section B, 3: This question seems written to create a negative inference and perhaps raise flags for enforcement. **We would suggest a more direct question about the existence and elements of a process for determining executive compensation** that could yield more meaningful information without putting responding organizations in a defensive posture.

Part II, Section B, 5: **We do not have that level of insight into the family and business relationships among all of the listed individuals, and we are concerned about inadvertently supplying incorrect information.** Moreover, is this additional layer of oversight necessary? As noted below, we already operate under exacting conflict-of-interest policies; like the IRS, we too, are worried about potential conflicts and take steps to identify and prevent problems. We do not believe that this information will provide additional meaningful data.

Moreover, Mount Sinai is conscious of the voluntary service provided by our trustees; Mount Sinai does not financially reward our board members in any way. In fact, it is increasingly difficult to get qualified board members to serve our institutions, and it is particularly hard to attract the next generation of younger board members. Serving on an academic medical center board is a large investment of time, energy, and resources with no monetary compensation in return. Our board members are volunteers, striving to best serve Mount Sinai and, in turn, its surrounding communities. Increasing the burdens placed on these volunteers would make it more and more difficult to recruit new board members, and we wonder whether the IRS's well-intended proposal could deter volunteerism in the future.

Part III, 3b: **Mount Sinai suggests some clarification of the universe of "transactions" to be studied.** We are uncertain as to whether the IRS is inquiring about only board activities and transactions, or whether the conflicts check is to be performed on all physician activities. We are committed to eliminating inappropriate relationships and ensuring that clinical decisions are made for the right reasons. To that end, we spend considerable time and resources collecting and checking for conflicts through disclosure forms and other methods. However, it would be extremely difficult for us to review all physician activities, particularly if the physician in question is not an employee.
In addition, we suggest rephrasing the question. As currently written, this inquiry could create a negative inference in many ways. If an entity indicates that it has reviewed no transactions, this could be seen as a problem, but if an entity indicates it has reviewed a great number of transactions, this could be viewed negatively as well. Perhaps a better approach would be to ask whether the organization engaged in any transactions that were subject to the policy but were not reviewed, and if not, why not.

Part III, 10: **Mount Sinai questions the utility of requiring a tax-exempt board to review the IRS Form 990 and related documents.** Given the necessary size of academic medical center boards – not to mention the complexity of health system boards – it is frankly unrealistic to expect that the entire board will have the knowledge or expertise necessary to review such technical documents. Even if it were possible, it is questionable whether such a broad review would add much by way of targeted, constructive criticism. Requiring that the 990 and related schedules be signed by a senior executive, accountable to the board, provides appropriate assurances about the forms' content.

In addition, we would request a definition of the word "review." Without clarification, the expectation being placed on the organization is unclear, and each institution's reporting is likely to vary based on its interpretation.

Part III, 11: **Mount Sinai suggests a change to the wording and substance of this question.** As written, the question presupposes publication of all noted forms and could perhaps imply some impropriety if such disclosure is not made regularly. However, we respectfully note that all such documents are not required to be publicly available and suggest that some may be inappropriate for such widespread dissemination. Ultimately, we are uncertain as to why the IRS is seeking this information.

Along with this overriding reservation, we would also request clarification of the definition of "audit report." This phrase could mean many things, and we would appreciate a better understanding of the IRS's objective here.

## SCHEDULE H

Our Hospital has two over-arching concerns about Schedule H. First, the implementation of the form should be extended at least to tax year 2010. In addition, we believe the Schedule veers far from the fundamentals of the community benefit standard, and we find this change troubling.

The Mount Sinai Hospital requests delayed implementation of Schedule H until tax year 2010. The Hospital is concerned about the resources required to capture and report community benefit consistent with this proposed form. Despite years of commitment to the tenets of community benefit and a genuine dedication to its value, it will be excessively difficult for the tax-exempt hospital community to master and refine the IRS's proposed community benefit measurement and reporting practices in the coming year.

Institutions that have been working with such data collection systems for years attest to their inherent difficulties and nuances; they warn that it is unrealistic to believe most hospitals will be able to accurately report and attest to their community benefit work within the timeline the IRS is proposing for implementation of Schedule H. The difficulty of this task is heightened by the IRS's acknowledgement that final directions and definitions will not be finalized until June 2008.

Thus, we suggest that the IRS allow at least a two-year transition for implementation of the entire Form 990 and for Schedule H in particular. Operationally, the IRS should consider issuing a second draft of the proposed Schedule H in 2008 with an appropriate comment and review period. Working together, the IRS and hospital community could finalize a satisfactory schedule and instructions by December 31, 2008. This would give hospitals all of 2009 to revise their financial and data record-keeping systems so that they could accurately capture the new information that would be reported for tax year 2010.

**The Hospital seeks revisions to better reflect all of the components of the community benefit standard and to eliminate those questions unrelated to community benefit.** The community benefit standard should be the test for hospital compliance, and it should be appropriately reflected in the proposed Schedule H, just as it is incorporated into other forms and reflected in the IRS's own prior and long-standing rulings and legal precedents.

Our Hospital, like all 501(c)(3) charitable organizations, must operate in accordance with its tax-exempt purposes. Our primary purpose is the promotion of health, with the understanding that this benefits the community as a whole. Since the issuance of Revenue Ruling 69-545, the IRS has applied the community benefit standard by evaluating how five elements – (i) an emergency room open to all regardless of ability to pay; (ii) an independent board of trustees representing the community served; (iii) an open medical staff policy; (iv) the provision of care to all persons in the community able to pay either directly or through third-party payers; and (v) utilization of surplus funds to improve patient care, facilities, and education – relate to the facts and circumstances of a particular hospital and the community it serves.

The community benefit standard allows hospitals to go beyond traditional health care to provide social, human, and preventative services where they are most needed. The determination of what a particular community needs and how a hospital can best serve those needs can best be made by an independent board of trustees who live in and truly know the community itself. As just one example, our Hospital does extensive work in our community to thwart the twin epidemics of obesity and diabetes. We are tackling these problems on three fronts: community outreach and innovative patient care programs; medical resident education and training; and research to develop a better understanding of the disease and possible treatments. These activities are meaningful to and necessary for the community we serve and should be acknowledged as being an important indicator of how we operate consistent with our tax-exempt purposes.

*Hospital bad debt should be recognized as a community benefit.*

All existing community benefit activities should be recognized and valued. Most notably, the exclusion of bad debt from the IRS's tracking and calculation of quantifiable community benefit is a serious omission; bad debt is truly charity care in a great percentage of instances. We provide a significant amount of care to un- or under-insured patients that is identified as bad debt only because the patients treated are unwilling or unable to complete a financial assistance application. This problem is aggravated when indigent patients require services in the emergency room, which is not a setting that is conducive to or appropriate for the completion of applications. Notably, the New York State Bad Debt & Charity Care Pool recognizes this and includes equal consideration of both charity care and bad debts in the methodology to distribute pool funds. We believe that this is wholly appropriate as a public policy matter.

Our Hospital commits significant resources to assisting patients in their completion of financial assistance applications (in fact, we have an entire office devoted to this), but this cannot always be done at the time of service or even before a bill is mailed. The immediate priority is patient care, and thus, some individuals leave the hospital setting without completing a financial assistance application. Even for those who provide the Hospital with necessary personal contact information, they may not provide any information on their financial status and it is not until after the patient receives a bill that she or he contacts the Hospital for further information on how to apply for financial assistance under the Hospital's policy.

Mount Sinai believes that the IRS would be remiss in not recognizing the resources tax-exempt hospitals expend to provide what is truly charity care to their communities. We respectfully urge the inclusion of bad debt in any quantification of the community benefit standard.

*Community Building activities should be included as community benefit.*

In addition, Mount Sinai requests that the IRS reinstate reporting for Community Building activities, which would include all of the community activities we undertake that contribute to the overall mental, physical, and social well-being of the community. Such activities are critical to the communities we serve and help to solidify the relationship between our institution and the people who need us. As just one example, we work with our local unions to provide job training and placement for people in the community who might otherwise be unemployed or under-employed. It would be inappropriate, we believe, to suggest that such activities are insignificant as one measure of community benefit. Most importantly, the IRS should be concerned that any decision not to include this category in its analysis could discourage the provision of these community benefits by hospitals, and ultimately, leave the community without the many necessary services upon which it relies. We respectfully request the IRS to revisit this issue.

In addition, Mount Sinai raises the following specific points about Schedule H:

- Part I, "Charity Care": We agree that charity care cost, losses from Medicaid, and losses from other government programs should be included in the category of charity care. As we discussed earlier, bad debts must also be considered in this section. **Furthermore, we recommend that State laws or directives on the timing and data used to make charity care eligibility determinations should be explicitly recognized.** Without this, any transparency the IRS achieves will be illusory because people reading the forms will be comparing "apples to oranges" across state lines. New York hospitals have worked extensively with State legislators to create certain charity care requirements and metrics, and we would respectfully suggest our State's work as a national model if one is indeed necessary.

  As of January 1, 2007, New York State hospitals are required to meet certain minimum standards with respect to the provision of financial assistance to patients who are unable to pay their bills. Compliance with these requirements is necessary for hospitals to receive critical funds from the State's $847 million Indigent Care Pool, which covers about 50% of documented hospital uncompensated care costs.

  Under the State law, hospitals must, at a minimum, provide emergency services to any uninsured State resident, as well as non-emergency, medically necessary services to any uninsured resident of the hospital's defined primary service area (PSA) for all patients with income levels up to 300% of the Federal poverty level (FPL). The PSA for each hospital has been defined by the New York State Department of Health. For New York City, for example, each hospital's PSA includes all five boroughs plus Westchester county for hospitals in the Bronx, and plus Nassau County for hospitals in Queens. Therefore, each New York City hospital's PSA covers a total population of at least eight million people, a good portion of who are uninsured. At or below 300% of the FPL, a patient's required payment is capped at the higher of what Medicare, Medicaid, or the highest volume commercial payer would have paid for the service.

  New York State and its hospital partners have collectively developed a model charity care provision that works for the intricacies of our communities. We would suggest that the IRS consider this deliberate process – and similar ones around the country – in any future charity care monitoring.

- Part I, Line 5, "Community health improvement services and community benefit operations": **The Hospital seeks more specific instructions to identify programs and benefits that are allowable for this purpose**. For example, our institution provides many programs that are partially grant funded. One example is our Mount Sinai's World Trade Center Program, which consists of both a Medical Monitoring Program and a Data Collection Center to assist World Trade Center responders and to identify and treat environmental health issues. The facility often either has matching fund requirements in order to qualify for the grant and/or provides additional subsidies to make the program possible. We believe such additional financial support should be included, but respectfully request that this be made explicit in the instructions.

- Part I, Line 6, "Health professions education": We note that in addition to Medicare, many state Medicaid programs also provide financing for graduate medical education. **Worksheet 5, used to calculate the net costs of these programs, needs to be expanded to recognize this Medicaid funding.** Furthermore, we request that the IRS release more detailed instruction on how hospitals are to calculate these amounts. Without further instruction, there is likely to be inconsistent reporting among hospitals.

  We also note that the worksheet line item seeking information on "other health professionals" requires clarification. Mount Sinai educates students in a range of fields and we are uncertain about which of these the IRS intends to include.

- Part I, Column (a), "Number of activities or programs": **This column is not applicable for some of the categories of community benefit that are to be reported.** In particular, the reporting grid should not require this reporting for lines 1-4 ("Charity care"), line 6, ("Health professions education"), line 8 ("Research"), and line 9 ("Cash and in-kind contributions to community groups."). Even with the IRS's instructions, it is difficult to quantify these items, and we worry about unanticipated inconsistencies across hospitals and/or inappropriate inferences being drawn if no number is supplied for a particular category.

- Part I, column (b), "Persons served": **It is difficult for hospitals to estimate "persons served", particularly in the context of community benefit or charity care environment.** Our members might see a patient in an Emergency Room setting, then again in a Medicaid clinic, and perhaps back again in the ER. It would be nearly impossible for our hospitals to identify "individuals" served in each of the community benefit categories. In addition, it is difficult to count individuals served in something like a support group or through a health fair. We respectfully seek recognition of these nuances.

**For reporting consistency, we suggest that the definition be clarified such that each encounter provided to an individual is counted as a "person served."** Furthermore, we do not believe that this column is appropriate for certain categories of community benefit, line 5 ("Community health improvement services", line 6 ("Health professions education"), and line 9 ("Cash and in-kind contributions to community groups").

Part II, "Billing and Collections": **Mount Sinai recommends removal of this chart.** Respectfully, we believe that the proposed chart is problematic because it does not yield information that relates to the community benefit standard and, as such, does not contribute to the IRS's goal of promoting compliance with tax exemption standards. In addition, the information sought here could be competitively sensitive. Third-party payers and other institutions would be among those who could review it, which could be harmful to us.

Finally, we note that much of the underlying information sought here could be found elsewhere in the Form 990 or Schedule H. Like its counterparts around the country, Mount Sinai is committed to providing all appropriate information to the IRS. However, we believe that the billing chart itself is not the proper way to seek the necessary data.

- Part III, "Management Companies and Joint Ventures": **Mount Sinai suggests that the IRS merge this section into other forms or eliminate it.** Hospitals are already required to provide information on joint ventures in the Core Form and on Schedule R. As a result, these questions should be eliminated from Schedule H.

- Part IV- **This area seems to be asking about the elements of the community benefit standard, yet this inquiry is not made clear**. We suggest that such a review be more explicit and broken down into more definitive components to ensure proper and meaningful responses. This is particularly important for the question on emergency room policies, which should be reformulated to provide information consistent with the community benefit standard and with the experience gained by the IRS in asking similar questions as part of its Compliance Check Questionnaire project.

- Additional suggestions:

    - The information provided by a hospital should be better contextualized. The IRS should include a section allowing filing organizations to indicate the type of facility or facilities making the report.

    - The IRS should permit live links to hospital information or attachments. For a number of questions, the space provided is not sufficient to fully describe the hospital's activities, programs, or policies. Quite often, a hospital will have preexisting documents or materials to provide this information appropriately. The IRS should permit (though not require) the insertion of live links to such information, or allow attachments.

## SCHEDULE I

**Mount Sinai suggests an increase in the threshold proposed in this section.** Part III of Schedule I requires an organization to report grants and other assistance to individuals in the United States if the grant amount is $5,000 or more. To require a report on every grant over $5,000 is extremely burdensome, and the resulting list would likely be too long to file electronically.

As such, we would request that this threshold be increased substantially, particularly for large organizations like academic medical centers. Note that the Federal Office of Inspector General/ Office of Audit Services requires an A-133 form to be filed annually to the National External Audit Review Center, employing a reporting threshold of $500,000. We would encourage adoption of this threshold.

## SCHEDULE J

**Mount Sinai believes that Schedule J places a significant burden on respondents without a clear benefit to the IRS or the public.** We respectfully question the significance of some of the numbers sought in this section, suggesting that the IRS examine what disclosure it seeks to achieve through Schedule J.

- Question 1, Column E: **We do not understand the reason this figure is included.** This information will be very difficult to extract and we respectfully question its value. Moreover, Mount Sinai does not believe that expense reimbursements should be reported on Schedule J, which is intended to disclose compensation amounts. Expense reimbursements that do not result in income to the recipient should not have to be reported on Schedule J.

- Question 2: Mount Sinai suggests re-wording this question. **A more meaningful inquiry might be whether the respondent has such a written policy and identification of its components**. If nothing else, the question should allow for more nuance than a simple "yes" or "no" answer. Even the most vigilant institution has anomalous errors, and we are, therefore, concerned that we might be penalized for honestly reporting ours.

- Questions 4, 5, and 6: **There is ongoing confusion about the distinctions between these points.** We suggest a more direct way of asking whether the organization pays bonuses or discretionary income. It would also be helpful to have more detailed instructions to clarify the types of compensation arrangements that would and would not be deemed to be determined in whole or in part by the revenues or net earnings of hospitals or health care organizations. In addition, we note that job performance is typically a necessary and appropriate component of determining compensation, within certain parameters.

## SCHEDULE K

**Mount Sinai respectfully questions the value of the information sought on Schedule K. The proposed form is burdensome and perhaps inefficient, and it should not be an element of the Form 990.** Completion of this schedule will require an enormous investment of labor and time, perhaps akin to a full-scale audit.

In particular, we wonder if it is appropriate to include this information on the Form 990 at all, but especially before the ongoing tax-exempt bond compliance check is completed. It may be more efficient for the IRS to collect the information sought in the compliance check, review it thoroughly, and then determine what type of additional oversight and disclosure processes are necessary so they can be tailored appropriately.

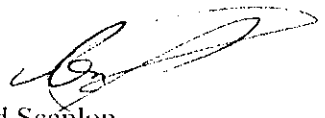
## SCHEDULE R

**Broadly speaking, Mount Sinai opposes the review of transfers between related tax-exempt organizations**. We regularly and appropriately transfer funds between and among our related institutions for legitimate business and patient care purposes. To this end, Part IV may lead to less financial decisions that are not in the best interests to the related organizations. We respectfully recommend that oversight be focused on transactions involving tax-exempt and non-exempt organizations instead.

## Conclusion

Mount Sinai is truly grateful for the opportunity to comment on the proposed Form 990 and its associated Schedules. We thank the IRS staff members for their accessibility and collaborative spirit throughout this comment period. We look forward to a continued dialogue that will allow us to collectively identify and promote the myriad community benefits provided by tax-exempt hospitals.

Sincerely,



Donald Scanlon
Executive Vice President and Chief
Financial Officer
The Mount Sinai Hospital
Mount Sinai School of Medicine

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| **From:** | Mary Gallagher |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Form 990 Comments to IRS 09 14 07 |
| **Date:** | Friday, September 14, 2007 10:00:09 AM |
| **Attachments:** | Form 990 Comments to IRS 09 14 07.pdf<br>image001.jpg |

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*Via Electronic Mail*

September 13, 2007

Internal Revenue Service
Form 990 Redesign; SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Subject: Comments on Draft Redesigned Form 990 and Schedules

Thank you for the opportunity to comment on the draft redesigned Form 990 and accompanying schedules recently published by the Internal Revenue Service (IRS). The following are comments of the Ohio Hospital Association (OHA) on behalf of its over 170 member hospitals and 40 health systems. In addition to the comments below, OHA endorses the detailed comments submitted by the American Hospital Association September 6, 2007 and August 21, 2007.

**The Proposed Implementation Date Should be Extended.**
The IRS has targeted a 2008 tax year implementation for the redesigned Form 990. For the majority of Ohio hospitals reporting on a calendar year basis, information systems must be changed before January 1, 2008 to accommodate the significant additional reporting requirements. It is unreasonable to require tax-exempt hospitals to overhaul financial and data

record-keeping systems on such a short time frame, especially given the lack of definitions, line item instructions and incomplete worksheets.

Ohio hospitals, the vast majority of which have begun collecting community benefit information on their own, have discovered the effort to be challenging, resource-intensive and a multi-year process. To modify or create systems immediately to meet the IRS Form 990 requirements will divert precious charitable assets away from patients and the community.

The IRS has not significantly overhauled the Form 990 in 25 years. It will take until 2010, at least, for the tax-exempt community to modify their systems to comply.

**Many of the Questions on the Form and Schedules are Burdensome, Confusing and Misleading.**

A typical tax-exempt hospital or health system will be required to complete, in addition to the multi-page core form, anywhere from eight to 14 schedules. Not only is this a burdensome and strenuous effort, the technical expertise required will result in most tax-exempt organizations being forced to hire professional tax preparers and accountants, adding costs to an already expensive undertaking.

In addition, the proposed draft contains many confusing terms and concepts. The redesigned form no longer serves as a tax return, but represents a full disclosure of all aspects of a tax-exempt organization. To that end, the terms and questions must be precisely drafted and defined. Any amount of ambiguity will result in misuse or a futile redesign of the Form 990. OHA also

encourages the IRS to allow tax-exempt organizations every opportunity to submit supplemental and explanatory materials with the Form 990. Where organizations differ in interpretation of the Form, additional information will allow the IRS and the public to understand and more fully appreciate the tax-exempt organization's response.

Many of the questions on the form will result in misleading information or

inaccurate interpretations. For example, by including on the Summary the number of individuals receiving compensation over $100,000, the IRS creates an incomplete picture of a tax-exempt hospital. One hospital that employs a portion of its medical staff may report a large number on Line 6 of the Summary, while a neighboring hospital that does not employ physicians reports a small number on this line. Without allowing explanatory detail to accompany the Form 990, a member of the public may be misled or confused about the operations of the tax-exempt organization.

**Schedule H Fails to Meet the IRS Goals of Transparency and Minimizing Burden.**

Hospitals should not be singled out by imposing a specific filing requirement in Schedule H for just one sector of the tax-exempt community. While some hospitals may represent large organizations within the tax-exempt sector, many hospitals are extremely limited in scope and size. Yet, all hospitals are subject to additional reporting not imposed on other tax-exempt organizations.

Another primary concern with Schedule H is the confusion over which tax-exempt organizations will be required to complete the schedule. The corporate structures of tax-exempt hospitals vary widely throughout Ohio and the country. However, as written, several non-hospital organizations would be required to complete Schedule H. The IRS should carefully craft the instructions for Schedule H to clarify this filing requirement.

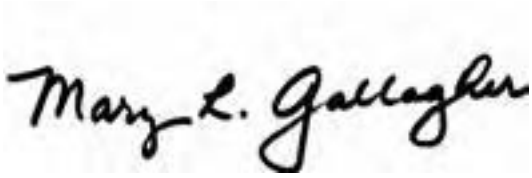
OHA supports the continued use of the community benefit standard to determine federal income tax exemption for hospitals. In addition, hospitals are continually working towards greater transparency in the areas of billing and collections to ensure patients are equipped to make educated decisions not just about their illness and treatment, but all aspects of their care, including financial considerations. Schedule H should be limited to those questions that capture hospital community benefit information.

In addition, OHA believes in order to appreciate the full value of the community benefit that hospitals provide, Medicare underpayments and patient bad debt should be reported on Schedule H. Although there may be

intellectual debate about how community benefit is calculated, to achieve true transparency, Medicare losses and bad debt are relevant figures to report in addition to Medicaid losses, free care and other uncompensated care. In addition, other community benefit activities such as free screenings along with the significant benefits of medical research and education should be captured and reported.

The Ohio Hospital Association takes pride in the commitments of Ohio hospitals to their communities and to improving health care in Ohio. We welcome every opportunity to tell our stories and anticipate increased transparency will allow the public to better appreciate the many contributions of hospitals. Thank you for your consideration of our comments. If you have any questions or would like to discuss these issues further, do not hesitate to contact me at (614) 221-7614.

Sincerely,



Mary L. Gallagher
Vice President and General Counsel

| | |
|---|---|
| **From:** | DeMeritte, Grant F |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | Henning, Heidi E; Mullins, Bob; |
| **Subject:** | Emailing: 2n2415c_.pdf |
| **Date:** | Friday, September 14, 2007 9:50:58 AM |
| **Attachments:** | 2n2415c_.pdf |

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Dear IRS Staff,

Here are the Howard Hughes Medical Institute's comments on the draft form 990.

Grant F. DeMeritte, CPA
Tax Compliance Manager
Howard Hughes Medical Institute
4000 Jones Bridge Road
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HHMI
HOWARD HUGHES MEDICAL INSTITUTE

**Comments on Form 990 Revision**
**Submitted via e-mail to Form990Revision@irs.gov**
**September 14, 2007**

Dear IRS Staff:

I write on behalf of the Howard Hughes Medical Institute (HHMI) in response to the proposed revision to Form 990. As background, HHMI is a Section 501(c)(3) medical research organization that is engaged in research in collaboration with non-profit hospitals, universities, and research institutes around the country, as well as in its own biomedical research facility. In addition, HHMI makes grants, both in the U.S. and abroad, to expand and improve science education.

Our comments on the proposed revised Form 990 are as follows:

## In General:

E-Filing: We are required to e-file and have no objection to doing so. However, we believe improvements to the process are desirable. Due to IRS server restrictions, we are unable to attach spreadsheets or other documents to the form that will be e-filed, which requires that we retype a considerable amount of data. Permitting the attachment of a narrowly defined range of electronic files such as Excel spreadsheets, Word documents, and PDF files (which could include audited financial statements) would reduce the filing burden.

Core Form: We agree that having a core form with key information is a good idea.

## Core Form

### Part I:

Line 4: We suggest that the instructions for this line refer to the glossary for the definition of "independent members of the governing body."

Line 7: We do not believe it is appropriate to ask for the highest compensation amount without any information about the position of the person receiving this compensation. We ask that this question be deleted. Form 990 users can refer to the complete presentation of compensation information in Part II instead. It does not appear to serve any purpose to report this one number with no context, when it is presented elsewhere on the form in a more useful and informative way.

Lines 15 and 17-19: We agree with the comments of the Independent Sector about the column requiring organizations to calculate revenues and expenses as percentages of the total amounts. In particular, we agree with the Independent Sector that this column should be dropped because there does not appear to be any basis for concluding that these percentages provide valid information about an organization's effectiveness or efficiency.

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301.215.8500

**Part II:**

Section A and Section B Line 10a: Like many exempt organizations, we have a fiscal year that is more appropriate to our operations than the calendar year. We believe that fiscal-year taxpayers should report information about compensation and other financial arrangements on a fiscal year rather than a calendar year basis. Fiscal-year reporting not only ties into other compensation figures reported on Form 990 (Part V Line 5 for example), but it is a better match with other revenue and expense figures, all of which are based on the organization's fiscal year. Also, allowing compensation and other financial arrangements to be reported on a fiscal year basis allows reporting on a much more current basis, which will make the compensation data reported on Forms 990 more useful as comparative market data for purposes of compliance with the intermediate sanctions rules under Section 4958. For example, our fiscal year ends August 31, so if we are required to report on a calendar year basis, the information on our Form 990 will be for the calendar year ending almost a full year before we file.

Section A: We agree with Column C as proposed. We disagree with comments suggesting that the average number of hours worked per week should be reported for board members or part-time employees.

Section A: We concur that, as set forth in the instructions for Columns (F) & (G), the term "loans" should not include advances made under accountable expense reimbursement plans for payment of business expenses.

Section B, Line 5: It would be extremely burdensome and should not be necessary for the reporting requirements of Line 5 to extend to any person who was an officer, director, trustee, or key employee "within the past 5 years". Once a person has ceased to be an officer, director, trustee, or key employee, the organization should not have to continue to report on that person's business relationships, or business relationships of that person's family members, in subsequent years. As the instructions seem to recognize, as a practical matter, a former officer, director, trustee, or employee will have little or no incentive to respond to an organization's requests for information about any relationships. We ask that you revise Line 5 to limit the disclosure to any transactions during the tax year between the filing organization and persons who were officers, directors, trustees or key individuals within the past 5 years, or with companies owned more than 35% by such former officers, directors, trustees, or key employees, that were not otherwise reported on Section A. This would be consistent with the definition of "disqualified person" under Section 4958 (which continues for 5 years after leaving the organization) and, if revised in this way, the filing organization should be able to answer the question based on information within its own control.

Section B, Line 5b: In the event you leave this question on the Form, the instructions should explicitly exclude charitable donations to tax-exempt organizations from paragraph (2) of the instructions for this line. In other words, if one Trustee makes a donation to a charity on whose board another Trustee sits, this is not a business

transaction and should not be subject to any disclosure or reporting requirement. This is consistent with the confidentiality otherwise accorded to charitable donations on Schedule B.

Section B, Line 8: This line calls for nontaxable fringe benefits and expense reimbursements to be treated as compensation. We strongly disagree with this concept. It is inaccurate and misleading to treat nontaxable fringe benefits, or expense reimbursements made through an accountable plan, as compensation.

**Part III:**

Line 2: According to the instructions for this line, any change at all in the organization's policies on compensation of officers, directors, trustees, or key employees, or in policies on conflict of interest, whistleblowers, or document retention and destruction, must be reported. We believe this is overbroad. A large organization may have many policies that could be construed as relating to compensation, conflict of interest, whistleblowers, or document retention or destruction, and it is not clear why changes in these policies should be considered significant for tax reporting purposes. If any reporting on these policies is required, the reporting should be limited to significant changes in these policies.

Line 3: Our organization has a number of different conflict of interest (COI) policies that apply in different contexts; for example, our laboratory heads are subject to COI policies tailored for their work and activities; our investment personnel are subject to an investment-specific COI policy; our purchasing staff has guidance specifically addressing dealing with vendors; and our board has its own COI policy. It would be extremely difficult for us to track the number of transactions reviewed under all conflict of interest policies, nor do we think that this number would be of any help to Form 990 users. Line 3a, which anticipates a single COI policy, should recognize that large, complex organizations may have multiple COI policies. As to line 3b, we agree with the recommendation of the Independent Sector that you ask each organization to report whether it distributed a copy of the relevant COI policy or policies to all board and key staff members during the year and whether those board and staff members were asked to report any conflicts of interest related to organizations or individuals with whom the filing organization transacts business. In addition, distribution of a copy of the relevant COI policy should be able to be done not only with hard copy or an email attachment, but by sending by email a link to the policy if it is posted on an internal or external website.

Line 6: Our organization, and we expect many others, has a practice in which the governing body, at each of its quarterly meetings, formally approves the minutes of the prior meeting. This is consistent with the requirements for "adequate documentation" under Treas. Reg. 53.4958-6(c)(3)(ii), which requires that (i) the documentation (i.e., minutes) be *prepared* before the later of the next meeting or 60 days after the action or actions of the governing body are taken and (ii) *approved* "within a reasonable time period thereafter." As phrased, the instructions to this Line imply that minutes must be both *prepared and approved* before the next meeting of the governing body or applicable

committee thereof. We ask that the definition of contemporaneous be modified to reflect the definition set forth in the regulation cited above, or at a minimum to allow for approval of documentation "at or before" the later of the next meeting or 60 days after the action or actions of the governing body are taken.

Line 10: We ask that you revise this question to ask whether the organization made a copy of the 990 available to all members of the governing body. Review of the Form 990 by the entire governing body prior to filing is not practical and, and at least for large organizations, would seem to be unnecessary micromanagement. Additionally, not all members of the governing board of a large organization will have the time and qualifications needed to provide a substantive review of the very complex and detailed Form 990. You might ask whether the organization provided a copy of the 990 to all members of the governing body, but if the organization posts the 990 on its website it should not be necessary to also send a hard copy to members of the governing body.

**Part IV:**

In General: We agree with the elimination of exclusion codes and some of the detailed schedules now required.

Line 13: We would like clarification as to whether Medicare Part D expense reimbursement (i.e., the subsidy for employers providing retiree health insurance) should be reported here, under Miscellaneous Revenue, or in some other location. We do not believe it is appropriate to report these revenues in Line 2a because they are not revenues received for medical services.

**Part V:**

Lines 1 and 2: We suggest that you clarify whether a fellowship paid to a university or other non-profit institution at which a selected awardee will be doing his or her research or studies is reportable as an individual grant or whether it would be considered an institutional grant. If the grantor controls the selection of the individual awardee, it would appear that this is an individual grant even though, for administrative purposes, payment is made to an institution, and that institution is then accountable to the grantor for use of the funds and is responsible for any tax reporting to the awardee.

Line 3: The form itself says that this line is for grants and other assistance to governments, organizations, and individuals "outside the U.S.". However, the instructions say that this line should include "grants or assistance to persons who are not citizens or residents of the U.S.", implying that this line includes grants or assistance to, for instance, foreign students who are studying in the U.S. We believe that a grant in support of a foreign student or researcher who has been lawfully admitted to study or do research in the U.S., where the grant will be disbursed within the U.S. for study or research at a U.S. institution, should not be considered a grant to an individual "outside the U.S." and should not be reportable on Line 3. We ask that this be clarified in the

instructions for Line 3. Similarly, we ask that these grants be reportable on Schedule I rather than Schedule F.

Lines 13 and 16: The additional guidance in the instructions regarding office and occupancy expenses is helpful.

Line 14: If you retain this new category for Information Technology expenses, we suggest excluding from it the costs of developing new hardware or software code as part of a programmatic activity (such as medical researchers writing algorithms to search genomic data).

**Part VI:**

Lines 4 through 7: We ask that as in Part II, Section A, the instructions for these lines clarify, consistent with Part II, Section A, that loans do not include advances made under accountable expense reimbursement plans for payment of business expenses.

**Part VII:**

Line 6: We recommend that you retain line 6a and move the questions on lines 6b-d into Schedule K. Lines 6b-d are very technical and do not seem to belong on a schedule titled "Statements Regarding General Activities". Line 6d seems to already be reflected in column (h) of Part I of Schedule K.

Line 11: This line asks if the organization has a written policy or procedure "to review the organization's investments or participation in disregarded entities, joint ventures, or other affiliated organizations (exempt or non-exempt)." We recommend that this question be dropped. It should not be necessary for an organization to have a written policy or procedure specifically on this issue as these investments, like any others, should be regularly reviewed by those responsible for the organization's investments, as a matter of good investment practice.

Line 12: This line asks if the organization has a written policy that requires the organization to safeguard its exempt status with respect to its transactions and arrangements with related organizations. It should not be necessary for an organization to have a written policy or procedure specifically on this issue. Instead, safeguards for the maintenance of exempt status should be built into an organization's review of all transactions and arrangements, not just those with related organizations.

**Part IX:**

Line 2: We ask that you delete the question regarding the organization's "most significant program accomplishment". For a large organization, it is very difficult to select one accomplishment as being the most significant in any period of time. We believe that to select one accomplishment out of an entire body of work is misleading and fails to properly credit those activities not highlighted. Also, in research, it is not possible

to know in the current year what findings will prove to be the most significant over the course of time; this is why, for example, Nobel Prizes in fields like chemistry and medicine are typically awarded for work done years, if not decades, before.

**Schedule D:**

Part XII, Endowment Funds: This should reference Form 990, Part VII, Line 16, not Form 990, Part VII, Line 6.

Part XII, Endowment Funds: We suggest that you include a definition of "endowment fund" in the instructions, such as the definition used in the Uniform Management of Institutional Funds Act.

**Schedule F:**

Part I: HHMI, like many other large exempt organizations, invests assets worldwide. While we have no objection to disclosing the countries in which we have financial accounts, it would be administratively burdensome to require that investment expenses be allocated on a country by country basis. Investment decisions are typically made from the headquarters office in the U.S. and there is no reasonable basis for allocating expenses to specific investments, whether within or without the U.S. In addition, no meaningful information will result from the allocation of investment expenses on a country by country basis. We ask that Column (f) be limited to expenditures for non-investment activities.

Part II, Line 1, Column (a): You ask for the full legal name of each foreign grantee organization. Please note that in many cases this will have to be transliterated into English from a foreign language that uses a different alphabet, so will not necessarily be the full legal name that the organization uses.

Part II, Line 1, Column (b): We ask that you not require grantmaking organizations to have to determine in all cases whether a foreign grantee organization has been recognized as exempt by the IRS and the code section of the exemption. In particular, where a grant is made to a foreign organization and none of the grant funds will be used for activities in the United States, so that no tax reporting or withholding is required, it seems unnecessary to have to ask if the foreign grantee has been recognized as exempt by the IRS.

Part II, Line 1, Columns (e) and (f) and Part III, Columns (d) and (e): These columns require reporting of the amounts of cash grants and the manner of cash disbursement to foreign grantees. Please note that cash payments will not be the same as the amounts accrued, because of the FASB requirements that grants be recorded on an expense basis.

**Schedule I:**

In General: As noted above in our comment on the Core Form, Part V, Line 3, we believe that a grant in support of a foreign student or researcher who has been lawfully admitted to study or do research in the U.S., where the grant will be disbursed to the grantee through a U.S. institution for study or research at such institution, should not be considered a grant to an individual outside the U.S. These are grants paid to a U.S. institution for study in the U.S. and we believe they should be reported on Schedule I rather than Schedule F. In addition, please note that we do not routinely gather information about the citizenship or residence of individual grantees and it would be burdensome to have to do so. The instructions say that the organization should make citizenship or residence determinations "based on its knowledge of the recipient's status or from information readily available from which a reasonable determination can be made"; we are not certain that in all cases we will have knowledge of a grantee's status or readily available information about that status.

Part I, Line 2a: This column appears to require HHMI to report any relationship that might exist between any HHMI grantee (whether an individual or institution) and an HHMI officer, director, trustee, highly compensated employee or member of a selection committee. This is an incredibly broad question that would appear to require disclosure, for example, of any situation where a member of HHMI's board is also a board member or employee of an institutional grantee, even though HHMI's conflicts of interest policy for trustees provides that trustees will not participate in decisions to award grants to institutions with which they are affiliated. For example, since one of HHMI's trustees is on the board of The Rockefeller University, this would require HHMI to list every grant made to Rockefeller even though the trustee had no involvement in HHMI's decision to make the grant This question should be narrowed to exclude any grantmaking decisions of the organization in which the interested person did not participate.

Part II, Column (d) and Part III, Column (c): These columns require reporting of the amounts of cash grants and the manner of cash disbursement to grantees in the U.S. Please note that cash payments will not be the same as the amounts accrued, because of the FASB requirements that grants be recorded on an expense basis.

**Schedule J:**

In General: As noted above in our comments on the Core Form, Part II, Section A and Section B Line 10a, we believe that information about compensation and other financial arrangements should be reported on a fiscal year rather than a calendar year basis, as fiscal year reporting ties into other compensation figures, is a better match with other revenue and expense figures, and will provide more current data. We ask that you allow reporting on Schedule J of supplemental compensation information on a fiscal year basis.

In General: Because information about compensation paid directly by the organization is already reported in Part II of the Core Form, we ask that Schedule J include only payments from related organizations, and not payments from the organization itself.

Line 1, Column C: this form includes, in the definition of "deferred compensation," annual bonuses attributable to the tax year but that are paid at the beginning of the following year. Since the W-2 amount in Column Bii will already include the annual bonus paid during the tax year on account of the prior year, the effect of this will be to artificially inflate the compensation of officers and key employees who receive annual bonuses. The payment of bonuses at the beginning of the year for prior year performance is a common practice and so the overall effect of this reporting requirement will be to artificially inflate 990 compensation data that is reported to the public and that is relied on by other tax-exempt organizations and by compensation consultants for purposes of assessing the reasonableness of compensation for intermediate sanctions purposes. Column C should exclude annual bonuses paid during the next year from the definition of "deferred compensation."

Line 1, Columns (D) through (F): We ask that Column (D), Nontaxable Benefits, be eliminated. It would be extremely burdensome to try and assess the value of all fringe and other nontaxable benefits provided to officers, directors, trustees, key employees and other highly-compensated employees, and we do not believe it is necessary or helpful to try to include this information. Similarly, since an individual's compensation clearly does not include business expenses reimbursed under an accountable plan, Column (E), Nontaxable Expense Reimbursements, should be eliminated. The concept of adding expense reimbursements to other items of compensation to arrive at Column (F) is fundamentally flawed and will produce a misleading picture of an individual's compensation, particularly to readers who are not sophisticated about the concept of expense reimbursements. Although we see no reason to require reporting of business expenses reimbursed under an accountable plan, an alternative to eliminating such reporting would be to put it in a Column at the end of the table and to exclude these amounts from the "Total" column.

Line 3: This line asks whether the organization paid for first-class travel, club dues, or use of personal residence. A yes or no answer to this question is not very helpful, since the answer would be yes even where the organization paid for one first-class trip for one officer. If you truly want this information reported, it would be better to break out the three items and ask separately about each, and also ask whether the organization "routinely" paid for the item. For example, the first question might be: "Did the organization routinely pay for first-class travel for persons listed in Form 990, Part II-Section A?" Or, instead of a yes/no question, you might ask: "For how many of the persons listed in Form 990, Part II-Section A did the organization pay for first-class travel?"

Lines 4, 5 and 6: These lines ask whether the organization paid compensation determined by the revenues or net earnings of the organization or a related organization, or provided any other non-fixed payments. A yes or no answer is not particularly helpful here, since there is no indication of how many of the listed individuals received this type of compensation. HHMI, for example, pays bonuses to investment personnel who outperform their benchmarks, because this is a typical part of compensation for this type of position; but other listed persons would not receive any compensation determined by

revenues or income. However, because of the yes/no nature of the answer it would not be clear that this type of compensation is paid only to a limited subset of the persons listed in Form 990, Part II- Section A. We suggest that instead of asking yes/no questions, you begin each of these questions with: "For how many of the persons listed in Form 990, Part II-Section A did the organization…."

**Schedule K:**

Part III, Lines 3-5: These lines seem to take an oversimplified approach to the issue of private business use based on a research agreement. In particular, there seems to be an assumption that all research agreements outside the Rev. Proc. 97-14 safe harbor should automatically be treated as private business use, and that all use by an entity other than a 501(c)(3) or state or local government is automatically private business use regardless of the terms of use.

**Schedule L:**

In General: We ask that as in Part II, Section A, the instructions for these lines recognize that loans do not include advances made under accountable expense reimbursement plans for payment of business expenses.

**Schedule R:**

In General: We do not believe that an organization that is a limited partner in a partnership should be considered to have "control" of the partnership, even if the organization has ownership of more than 50% of the profits or capital interest in the partnership, since by definition the role of a limited partner is passive and non-controlling in nature. Organizations should not be considered to be related to partnerships in which they serve only as limited partners, regardless of the percentage ownership. If you still want to collect information about partnerships in which the organization is a limited partner, we suggest that you include a section on limited partner interests for this purpose. Please recognize that for large organizations, this will be a large amount of information to report.

Part III: We ask that UBI not need to be reported here as it will be reported on Form 990-T, which is now a public document.

Respectfully submitted,

Grant F. DeMeritte, CPA
Tax Compliance Manager
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| | |
|---|---|
| **From:** | Gartland, Heidi L. |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Form 990 Revision Comments |
| **Date:** | Thursday, September 13, 2007 7:50:58 PM |
| **Attachments:** | UH Form 990 Revision Comments 9-13-07.pdf |

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Thank you for the opportunity to submit our comments. Please let me know if you have any questions.

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September 12, 2007

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Form 990 Redesign
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Sent via email to
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**RE: IRS Release of Discussion Draft for Redesigned Form 990, June 14, 2007**

Dear IRS Representatives:

University Hospitals Health System, Inc. ("UH") is submitting this letter in response to the IRS's request for comments related to the redesigned Form 990 ("Discussion Draft") scheduled to be released for the 2008 tax year. UH and its subsidiary organizations comprise a not-for-profit tax exempt integrated healthcare delivery system (the "System"). The non-profit tax-exempt organizations (the "UH Subsidiaries") that comprise this System are all included as members of the UH Group Exemption.

We understand that the Discussion Draft calls for each UH Subsidiary to file its own Form 990. UH is deeply concerned that should this proposal be adopted, it will distort both the IRS's and the taxpayer's understanding of the scope, nature and substantial resources dedicated by the System to ensure our commitment to benefit the community though our mission – To Heal. To Teach. To Discover. – and its values – Excellence, Diversity, Integrity, Compassion and Teamwork. UH and each UH Subsidiary share the same mission and values. Requiring each organization within the System to file a separate Form 990 in many ways undermines UH's collective use of resources and the force of its entire commitment to serve the indigent as well as provide cutting edge research, teaching and academic programs and services.

Although UH applauds the guiding principles (the "Principles") behind the proposed redesign (namely, enhancing transparency, facilitating the IRS's assessment of non-compliance, and minimizing the burden on filing organizations), we firmly believe that the means chosen to achieve these Principles will actually result in less transparency, more difficulty in assessing non-compliance and substantially increased burdens on filing organizations. For these reasons (as more fully explained below) we urge the IRS to reconsider adoption of the proposed redesigned Form 990. In the alternative, we urge the IRS to delay its implementation until at least 2010 to permit complex non-profit tax-exempt healthcare organizations such as UH sufficient time to study the impact of the redesign, implement the necessary processes to capture System information and report it

in a manner consistent with the proposed redesign. We will also need this time to reallocate the already scarce and costly resources to facilitate UH's compliance with the increased burden of filing multiple returns with multiples of additional schedules and otherwise meet any new reporting requirements.

**Removal of the Group Return Filing Does Not Facilitate Transparency**

UH is a large integrated healthcare delivery system whose corporate structure is comprised of an academic medical center, six wholly-owned community medical centers and multiple physician group locations. These entities are not only ***integrated*** through common control and governance by a single parent entity (University Hospitals Health System, Inc.) as well as common use of centralized operations such as finance, human resources, compliance, risk management, information technology, legal and internal audit, they function ***collectively*** to advance the charitable mission of UH and provide community benefit to the patients they serve throughout the northeast Ohio region. For example, UH's highly ranked Ireland Cancer Center provides clinical services at multiple locations throughout Northeast Ohio on behalf of the System while focusing tertiary, quaternary and research resources at its urban academic medical center for the benefit of ALL of Northeast Ohio. UH has chosen not only to remain in the urban setting, but to expand such services as emergency services in that location notwithstanding the growing population of indigent and uninsured. UH is able to sustain this growth by allocation of resources from the System – not just of the hospital serving this population.

All of the UH Subsidiaries are accountable to UH (the parent organization). UH holds significant reserved powers that serve to ensure that each UH Subsidiary operate to achieve the charitable mission of the entire System. UH has worked extremely hard to create a culture of inclusion and integration, shunning the "silo" mentality in order to maximize the services and resources available to serve every community in Northeast Ohio, without regard to a patient's ability to pay or source of payment.

We strongly believe that eliminating the Group Return will create a greater likelihood that both the IRS and taxpayers will have a more difficult time understanding how all of the UH Subsidiaries combine with UH to achieve a single, common charitable mission. This has the effect of diminishing, not enhancing, transparency.

For example, the System's financial reporting will be skewed if each UH Subsidiary is required to file on a stand alone basis. Similar to consolidated financial statements that are part of the for-profit world, Group Return filings allow UH to consolidate and eliminate inter-company transactions that flow between related entities. If inter-company transactions are not eliminated, financial information will not be reported accurately from a System perspective, leaving the reader with an unrealistic picture. Additionally, since the proposed redesign requires disclosure of the compensation of certain officers, directors and key employees on *each* Form 990 return, a reader of all of the System's Form 990 returns will be presented a picture that significantly overstates, by a large degree, the compensation of these individuals.

We are proud that UH and all of the UH Subsidiaries have a tremendous record providing charity care. If we are not able to tell the readers of the information in a single Form 990, the impact will be diluted, confusing the reader and making it very difficult to understand how each component of the System contributes to the whole charitable effort of the System. The redesign is like a 1000 piece puzzle which, with the IRS proposed Form 990, would be divided up into a number of smaller puzzles that would no longer depict the entire picture.

Patients, too, will end up with a distorted view of the System if we are no longer permitted to file a Group Return. The communities of Northeast Ohio view the System as a continuum of highly sophisticated healthcare facilities and providers that render care throughout the entire region. Any one patient can be (and thousands of patients are) served at one or more of our many different outpatient clinics and hospitals that span a number of different Northeast Ohio counties. UH takes great care to ensure the delivery of seamless integrated healthcare to every patient. Requiring separate returns for each UH Subsidiary will impede the ability of patients to understand how all of the pieces and parts of the System work together to provide access to cutting edge clinical, research and teaching programs and services. Instead of enhancing transparency, the proposed Discussion Draft, if adopted, would create a splintered and confusing picture of the System.

**The Redesigned Form 990 Does Not Facilitate the IRS's Assessment of Non-Compliance**

UH believes that the means (separate returns) chosen by the IRS to achieve its ends (the Principles) is unnecessary. All of the information that the IRS is looking for in the separate returns of the redesigned Form 990 can be incorporated into and made available in a single Form 990 return. For instance, UH recommends inclusion of the "parent" organization within a Group Return to assist in not only meeting the goal of enhanced transparency, but in presenting a complete picture so as to facilitate the IRS's assessment of the extent to which a tax-exempt organization is (or is not) in compliance.

Currently, Group Returns are limited to including only participating subordinate members of the parent entity's Group Exemption and do not include parent information. In addition to retaining the Group Return, allowing Group Exemption holders to file one Group Return for both parent and subordinates will provide a more comprehensive view and realistic picture for charity care, community benefit, financial statement information, governance, and compensation reporting. This is a much more efficient and less confusing method for achieving the Principles than requiring the labor intensive presentation of duplicative responses in separate filings.

If organizations such as UH are required to file separate returns for each UH Subsidiary, this will result in giving the IRS a less complete picture of how each such UH Subsidiary truly contributes to achieving UH's charitable mission. Accordingly, the IRS may reach the conclusion that an individual UH Subsidiary may not be in compliance when in fact,

when viewed as whole within the context of the System, such UH Subsidiary clearly satisfies IRS community benefit and other applicable requirements.

For instance, UH, like many other tax-exempt organizations, relies on profitable lines of business to achieve its charitable mission. Through such reliance, UH is able to enhance community access and provide important healthcare services that are tremendously important to the community but which operate at a deficit. Within the System there are UH Subsidiaries that are located in communities with higher percentages of insured residents. These UH Subsidiaries are able to produce modest margins which directly support the charitable activities and unreimbursed care provided at other UH Subsidiaries, including UH Case Medical Center. Margins produced by UH Subsidiaries are reallocated to other UH Subsidiaries within the System support their charitable activities. This ensures that all members of the community have equal access to all of UH's high quality physicians and cutting edge technology and research activities. Elimination of the Group Exemption would distort the true picture of the charity care and other community benefits provided by the System as a whole.

**The Form 990 Redesign Substantially Increases the Administrative Burden on Tax-Exempt Organizations**

The redesigned Form 990 will increase costs and place additional burdens on all tax-exempt organizations as well as significantly increase compliance and reporting burdens. In the non-profit healthcare industry, this additional unfunded mandate adds yet more cost to an already overburdened healthcare system. If the Discussion Draft is adopted, UH anticipates that it will need to add additional staff simply to design new processes for collecting and reporting information on behalf of each UH Subsidiary. UH expects that it will also need to spend substantial additional dollars on outside accounting/auditing fees to further ensure the capture and reporting of information on behalf of multiple UH Subsidiaries. Instead, UH believes that its finite resources would be better put to use byfocusing on ensuring the accuracy and comprehensiveness of information reported in the Group Return.

We simply fail to see how the proposed redesign will achieve the Principle of minimizing the burdens on filing organizations. To the extent the IRS desires the reporting of additional or supplemental information that is not currently required on the Group Return, there is no reason why such information/reporting cannot be incorporated into the Group Return itself. This seems to us to be a much better option instead of requiring the multiple reporting of the same information (or information that across an organization such as our System will create distortions and confusion when reported out of context and in "silos").

UH and organizations like it will need more time for gathering, analyzing and preparing *meaningful* information to provide to the IRS and ultimately the public. The operations of an entity should drive record keeping, financial reporting, and tax compliance, not the disclosure document it is required to file. For some integrated systems, entire

departments may need to be created to properly track and gather this additional information resulting in increased operating expenses. Furthermore, organizations (including UH) are sure to see an increase in preparation and review costs by independent third party advisors. We have seen this borne out with organizations that are subject to the Sarbanes Oxley reporting requirements and are concerned that with the proposed Form 990 redesign, UH and similar organizations will be required to divert more of every healthcare dollar to administrative functions that generate no real benefit for the community.

**The Discussion Draft Fails to Achieve the Stated Principles And Raises Other Concerns**

A. **Discussion Draft: Part II, Page 3 – Question 5.b:**

Question 5b asks - *During the tax year, did any person who is or was an officer, director, trustee, or key employee within the past 5 years (b) have a business relationship with any other person listed in Section A?* We believe the breadth and scope of this question could chill sophisticated or otherwise highly qualified community members from seeking or maintaining involvement at the board level of non-profit tax exempt organizations. We believe that business and other community leaders should not be deterred from serving the community by participating on hospital or other boards simply due to historic or other business relationships they may maintain. In small communities which rely on even smaller groups of community and business leaders, there is often significant overlap in business and community relationships. We believe the IRS should promote involvement of these business leaders and encourage their service in non-profit causes. We further believe that there already exists a regulatory scheme through the intermediate sanctions that fully addresses the IRS's concerns and protects taxpayers from situations where business relationships may result in the misuse of charitable assets.

B. **Discussion Draft: Schedule J – Supplemental Compensation Information:**

UH believes that Schedule J as set forth in the Discussion Draft will result in confusion and ultimately mislead the reader. Nontaxable expense reimbursements are not part of taxable compensation and should not be reported on Schedule J. Reporting these items here misleads the reader to believe these items are part of an individual's compensation. UH understands the IRS's concerns regarding the potential for abuses in this area, but to include these items on a schedule relating to compensation is misleading and creates an unrealistic picture.

C. **The Discussion Draft Proposed Timeline is Unrealistic:**

UH strongly urges the IRS to delay implementation of the Redesigned Form 990 until January 1, 2010 or later. The Discussion Draft is a complete overhaul of the current Form 990 and imposes significantly burdensome reporting requirements for all tax exempt organizations, small or large. The proposed changes will require hospitals to

develop and implement new mechanisms to begin analyzing and capturing this data. More time will provide filers and software developers adequate time to prepare for these extensive changes.

D. **This Letter Incorporates The Comments of the American Hospital Association**

In addition to the comments submitted on its own behalf, UH (as a member of the American Hospital Association) fully supports, and urges the IRS to adopt, AHA's comments to the Discussion Draft (which are being submitted separately by the AHA itself). AHA is submitting these comments on behalf of its nearly 5,000 member hospitals, health care systems, networks, and other health care providers, and its 37,000 individual members. We are incorporating AHA's comments by reference in this letter. This includes AHA's first set of comments relating solely to Draft Schedule H that were submitted on August 21, 2007.

We hope that you will give our comments serious consideration and revise the Discussion Draft to retain the Group Exemption.

Sincerely,

***University Hospitals***

Thomas F. Zenty III
Chief Executive Officer

| | |
|---|---|
| **From:** | Karen Stickney |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | |
| **Date:** | Thursday, September 13, 2007 5:44:50 PM |
| **Attachments:** | IRS 990 Letter 9 07.doc |

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<<IRS 990 Letter 9 07.doc>>

Karen Stickney
Administrative Assistant/Medical Staff Coordinator
St. John's Lutheran Hospital
Libby, MT 59923
406-293-0103 406-293-4428(fax)

ST. JOHN'S
LUTHERAN HOSPITAL
Excellent Healthcare Close to Home

**350 Louisiana Avenue**
**Libby, MT 59923**

**Phone: (406) 293-0100**
**FAX: (406) 293-4428**

September 11, 2007

By Electronic Filing

Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, D.C. 20224

RE: COMMENTS ON DRAFT REDESIGNED FORM 990 AND SCHEDULES

I appreciate the opportunity to submit comments on the draft redesigned Form 990.

St. John's Lutheran Hospital is a 25 bed Critical Access Hospital in Northwestern Montana. We are a private not-for-profit 501-c-3 operating entity and currently are required to complete the Form 990. It is with this in mind that I make my comments.

St. John's Lutheran Hospital provides community benefit report for our patients and community members. This information is updated annually. Our community benefit reports provide the amount of detail which is practical for an organization of our size. We do not use the VHA or CHA programs because of their respective costs and lack of staff to complete the extensive data requirements.

It is always difficult to make one solution "fit" all types of entities particularly hospitals. The critical access hospital program was designed to maintain access in rural and frontier parts of the United States. Critical Access Hospitals like St. John's Lutheran Hospital struggle with cash flow and because of our environment probably are some of the most transparent hospitals in the United States. Therefore my areas of concern are identified by the following.

**Probable Impacts of Proposed Form 990 on Teton Medical Center**

- The proposed reporting requirements would impose an unreasonable burden on SJLH staff and financial resources to comply at the stated level.
- Schedule H, which would require SJLH to quantify the community benefits we currently discuss would cost approximately $6000 in software and a .5 FTE of staff time we do not have available. This is excessive expectation of resource use in this one area when our staff needs to be working on keeping current on CMS regulatory impacts.

To address our concerns, I concur with MHA and recommend that

- CAHs be exempted from the community benefit reporting requirement or be required to report based upon metrics currently tracked which do not require specialized software to maintain. We use a simple Excel spreadsheet..
- The continued operation of St. John's Lutheran Medical Center as a Critical Access Hospital should justify our community benefit and exempt SJLH from the IRS proposed community benefit reporting.

I agree with the following discussion of additional concerns by MHA:

**The Definition of Community Benefit should include unpaid Medicare costs and bad debt.**
Providing medical treatment for the elderly and serving Medicare beneficiaries is an essential service provided by hospitals – regardless of the amount hospitals are paid for doing so.

Medicare's payments to hospitals do not cover the full cost of the care provided to Medicare beneficiaries. Nationwide, Medicare pays hospitals about 92 cents for every dollar of care they provide. MedPAC data substantiates the point that hospitals are losing money treating Medicare beneficiaries; MedPAC estimates that these losses are expected to grow in the future.

Medicare pays CAH's 101 percent of what it considers cost. However, Medicare excludes a number of costs; as a result, CAH's are really paid only 90-95 percent of cost. Unpaid Medicare costs amount to a subsidy hospitals provide to the Medicare program and are a substantial community benefit.

Much of the bad debt incurred by hospitals is for care delivered to low-income, uninsured and underinsured patients, who, for whatever reason, decline to apply for financial assistance. We serve these patients regardless of their ability to pay – which certainly qualifies as a community benefit.

In a 2006 report, the Congressional Budget Office concluded that its study supports using uncompensated care (bad debt and charity care) as a measure of community benefits.

**Collecting Pricing Data**
The IRS wants to collect pricing information that is not relevant to the charitable purpose of a hospital. The pricing matrix contained in Schedule H, Part II is unnecessary. Private pay pricing and discount information is proprietary. Disclosing it could give insurers a competitive advantage in negotiating contracts.

The data collected on a historical basis will serve no useful public function. The Form 990 is not an appropriate tool for the public to seek current pricing information about their

health care. The Centers for Medicare and Medicaid Services is already working to post price and quality data on the Internet for common services. The effort by the IRS is redundant, at best.

Since the Form 990 is collecting historical data, the pricing information is out-of-date. Consumers need access to pricing and quality information. But that data is best obtained directly from the medical providers being considered by the consumer.

If you would like additional details or have questions please contact me. I can be reached at 406-293-0177

Sincerely,

William D. Patten, Jr., MA, BS, MT(ASCP)
Chief Executive Officer

| | |
|---|---|
| **From:** | Jim Daniel |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Comments on Proposed Form 990 and Schedules |
| **Date:** | Thursday, September 13, 2007 4:52:54 PM |
| **Attachments:** | 20070913165040996.pdf<br>image001.jpg |

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Please see the attached sent on behalf of Jim Daniel.

Sincerely,

*Malissa J. C. Mallory*
*Hancock, Daniel, Johnson & Nagle, P.C.*
*P.O. Box 72050*
*Richmond, Virginia 23255-2050*
*Phone: 804.967.9604, Ext. 473*
*Facsimile: 804.967.9888*
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James M. Daniel, Jr.
Ext. 408
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September 13, 2007

**VIA EMAIL (Form990Revision@irs.gov) ONLY**

Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, D.C. 20224

**RE: Comments on Proposed Form 990 and Schedules**

On behalf of Hancock, Daniel, Johnson & Nagle, P.C. ("HDJN"), thank you for the opportunity to comment on the new draft Form 990 and its proposed schedules. Our law firm is among the largest in the Mid-Atlantic that primarily specializes in representing the healthcare industry. Many of our clients are tax-exempt hospitals and health systems that have a considerable interest in the Proposed Form 990 and its related schedules. We regularly advise such clients with various issues related to their tax-exempt status and have had the opportunity to obtain feedback from them about their comments on the proposed forms. We appreciate the work that the IRS has put into the new form and schedules and its openness to comments from the hospital community.

We believe that the IRS has made several significant improvements to the proposed forms and has taken significant steps in reaching its goal to make the operation of exempt organizations more transparent. However, we do have serious concerns about the filing deadline proposed by the IRS for the implementation of the new Form 990 and its proposed schedules as well other detailed issues as described below.

I. **Implementation** - Implementation of the proposed "Core Form" and each of the schedules should be delayed until 2010 to accommodate the delay the IRS anticipates in issuing instructions, as well as the need to adjust or create systems to capture the required financial information.

The burden of having to reconfigure financial and data record-keeping systems in time to begin capturing the substantial amount of data required within the Core Form and Schedules H and K make it necessary for exempt organizations to delay the effective date for implementing these forms. It is made virtually impossible by the fact that the instructions, definitions and worksheets needed to collect that data are not expected to be finalized until mid-2008. To require hospitals to overhaul financial and data recordkeeping systems before the definitions, line item instructions and worksheets for making the calculations required for Schedule H and Schedule K are completed is

unreasonably costly and disruptive. Also, if the Core Form is changed to disallow an organization to file a consolidated return, a considerable amount of time and resources will be required for such organizations to gather and report data separately.

II. **Core Form** – The following comments and suggestions apply only to the Core Form.

- Why was the box for the group exemption number deleted? Is the IRS proposing changes to the process or manner in which group exemptions are granted?

- The IRS should not limit the ability of an organization to file a group return as this would eliminate the ability of a health system to report information as a cohesive group. This is how many health systems gather and report such information. If multiple returns are required, this would result in less transparency as it would force the public to search through numerous returns to better understand how a health system is structured and the types of services it provides.

- The Core Form limits the ability of an exempt organization to use separate attachments. What if the space provided on the Core Form is insufficient to describe changes within the governing documents or program service accomplishments? Exempt organizations often include a report of program service accomplishments within Form 990 filings in an effort to describe their services and the manner in which they benefit the community they serve. The proposed format would significantly limit this ability.

- Will exempt organizations still need to separately submit entire copies of amendments and restatements of Articles or Bylaws to the IRS or would disclosures within the proposed Form 990 satisfy this requirement?

- Part II requires the exempt organization to include compensation paid to any former officer, key employee or highly compensated employee who received more than $100,000 from the exempt organization or any related organization during the tax year. The IRS should limit this reporting requirement by establishing a fixed look-back period of five years in order to limit the reporting burden placed on tax exempt organizations.

- The Core Form asks about changes to policies within questions about governing documents (Part III, Line 2). The instructions reference whistleblower policies, conflict of interest policies, record retention policies, procedures of audit committee and policies addressing the compensation of officers, directors and

key employees. Are these policies now required or recommended by the IRS? Will the IRS provide further guidance on a suggested form (as with the conflict of interest policy)? Please clarify in the instructions if the exempt organization is required to report changes in any of these specific policies within the Form 990 and separately to the IRS.

- On Part V, Line 18, please clarify that an exempt organization may report expenditures incurred for travel by a public official employed by the exempt organization for exempt organization business rather than public business.

III. **Schedule H – Hospitals** – The following comment and suggestion applies only to Schedule H.

- Physician recruitment expenses should be included within community benefit calculations to the extent that they are a part of the overall community benefit strategy.

IV. **Schedule J – Compensation** – The following comments and suggestions apply only to Schedule J.

- Question 1 requests information regarding accrued but not vested deferred compensation and also requests information about amounts paid.
    - We suggest removing the column for nonqualified deferred compensation that is not vested. It would be misleading to report this information if it is never paid by the exempt organization due to forfeiture.
    - Alternatively, we suggest restructuring this question to avoid double-reporting so the public clearly understands the difference between paid and accrued but not vested compensation.

V. **Schedule K – Bonds** – The following comments and suggestions apply only to Schedule K.

- This form imposes new annual reporting requirements on tax exempt organizations concerning specific information that would be burdensome to track and report with specificity. We suggest limiting the structure of the form to mirror the substance and timeline of prior filings made under the IRS Form 8038 series in an effort to minimize the extensive burden that will be placed on exempt organizations to gather, compile, monitor and report this data on a continuing basis. Further, we also suggest limiting the use of the schedule to situations in

which an IRS Form 8038 series filing is made or when there is a material change in use or bond proceeds or aggregate private business use.

- Should private business use under management contracts and sponsored research agreements be aggregated or separately reported? Please clarify in the instructions.

VI. **Schedule R – Related Entities** – The following comments and suggestions apply only to Schedule R.

- Part V exempts gift and grant transactions between 501(c)(3) organizations. Does this include "transfers"? If not, what is the difference between a gift and a transfer?

- If all transfers between an exempt organization and each of its exempt related entities need to be reported, should this information be aggregated? With many exempt organizations, transfers are made on a daily basis and would be burdensome to report on an itemized basis. We suggest permitting the use of a summary report. Please clarify in the instructions.

Thank you for your consideration of these comments and concerns and for the opportunity to provide feedback on the Proposed Form 990 and its schedules.

Sincerely,

Hancock, Daniel, Johnson & Nagle, P.C.

By: _____
James M. Daniel, Jr., Director

| | |
|---|---|
| **From:** | Jennifer Diede |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Form 990 Revision Feedback |
| **Date:** | Thursday, September 13, 2007 3:16:28 PM |
| **Attachments:** | Form 990 Response Letter.doc |

# Dahl Memorial Healthcare Association

***P.O. Box 46, Ekalaka, MT 59324, Tel: (406) 775-8739***

*"Professional Healthcare with Western Hospitality"*


September 13, 2007

By Electronic Filing

Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, D.C. 20224

RE: COMMENTS ON DRAFT REDESIGNED FORM 990 AND SCHEDULES

We appreciate the opportunity to submit feedback on the redesigned Form 990.

Dahl Memorial Healthcare Association is an 8 bed frontier Critical Access Hospital with a 23 bed Skilled Nursing Facility and a Rural Health Care Clinic operated in a combined facility model. Dahl Memorial is a private non-profit facility. We also have a 501 c-3 operating status. Therefore the changes that the redesign will require could become quite a financial burden to a facility of our size and structure.

Dahl Memorial Healthcare Association provides community benefit reports as part of our annual meeting each September. The community benefit reports provide the amount of detail that is practical for the design and size of our organization. We do not use the VHA or CHA programs because of their respective costs and lack of staff to complete the extensive data requirements. As a tax supported entity with all of our Board Meetings open to the public, transparency is really not an issue for Dahl Memorial.

It is a difficult assignment to produce one solution for such a diverse group of entities particularly hospitals. The Critical Access Hospital Program was designed to maintain access in rural and frontier parts of the United States. Critical Access Hospitals like Dahl Memorial Healthcare Association struggle with cash flow, finding future employees and the ability to remain open because of the nature of our environment. Frontier healthcare organizations are probably some of the most transparent hospitals in the United States. Therefore that designation alone should relieve Critical Access Hospitals from the reporting requirements in the redesign of Form 990. That is especially true at Dahl Memorial where our pricing is as much as 35% below other area hospitals on the prospective payment system (PPS). Our areas of concern are identified in the following information.

# Dahl Memorial Healthcare Association

*P.O. Box 46, Ekalaka, MT 59324, Tel: (406) 775-8739*

*"Professional Healthcare with Western Hospitality"*


September 13, 2007

**Probable Impacts of Proposed Form 990 on Dahl Memorial Healthcare**

- The proposed reporting requirements would impose an unreasonable burden on DMHA staff and financial resources to comply at the stated level.
- Schedule H which would require DMHA to quantify the community benefits we currently discuss would cost approximately $6000 in software and a .5 FTE of staff time we do not have available. This is excessive expectation of resource use in this one area when our staff needs to be working on keeping current on CMS regulatory impacts.

To address our concerns, I concur with MHA and recommend that

- CAH's be exempted from the community benefit reporting requirement or be required to report based upon metrics currently tracked which do not require specialized software to maintain. We use a simple Excel spreadsheet.
- The continued operation of Dahl Memorial Healthcare Association as a Critical Access Hospital should justify our community benefit and exempt Dahl Memorial Healthcare from the IRS proposed community benefit reporting.

I agree with the following discussion of additional concerns by MHA:

**The Definition of Community Benefit should include unpaid Medicare costs and bad debt.**
Providing medical treatment for the elderly and serving Medicare beneficiaries is an essential service provided by hospitals – regardless of the amount hospitals are paid for doing so.

Medicare's payments to hospitals do not cover the full cost of the care provided to Medicare beneficiaries. Nationwide, Medicare pays hospitals about 92 cents for every dollar of care they provide. MedPAC data substantiate the point that hospitals are losing money treating Medicare beneficiaries; MedPAC estimates that these losses are expected to grow in the future.

Medicare pays CAH's 101 percent of what it considers cost. However, Medicare excludes a number of costs; as a result, CAH's are really paid only 90-95 percent of cost. Unpaid Medicare costs amount to a subsidy hospitals provide to the Medicare program and are a substantial community benefit.

**Dahl Memorial Healthcare Association**
*P.O. Box 46, Ekalaka, MT 59324, Tel: (406) 775-8739*
*"Professional Healthcare with Western Hospitality"*

September 13, 2007

Much of the bad debt incurred by hospitals is for care delivered to low-income, uninsured and underinsured patients, who, for whatever reason; decline to apply for financial assistance. We serve these patients regardless of their ability to pay – which certainly qualifies as a community benefit.

In a 2006 report, the Congressional Budget Office concluded that its study supports using uncompensated care (bad debt and charity care) as a measure of community benefits.

**Collecting Pricing Data**
The IRS wants to collect pricing information that is not relevant to the charitable purpose of a hospital. The pricing matrix contained in Schedule H, Part II is unnecessary. Private pay pricing and discount information is proprietary. Disclosing it could give insurers a competitive advantage in negotiating contracts.

The data collected on a historical basis will serve no useful public function. The Form 990 is not an appropriate tool for the public to seek current pricing information about their health care. The Centers for Medicare and Medicaid Services is already working to post price and quality data on the Internet for common services. The effort by the IRS is redundant, at best.

Since the Form 990 is collecting historical data, the pricing information is out-of-date. Consumers need access to pricing and quality information. But that data is best obtained directly from the medical providers being considered by the consumer.

If you would like additional details or have questions please contact Nadine Elmore, CEO, or myself at the number given below. Thank you for your time and the opportunity to submit feedback on this project.

Sincerely,

Jennifer A. Diede
CFO
Dahl Memorial Healthcare Association
406.775.8739

| | |
|---|---|
| **From:** | Melissa Speck |
| **To:** | *TE/GE-EO-F990-Revision; |
| **CC:** | |
| **Subject:** | Comments on Draft Redesign of Form 990 and Schedules |
| **Date:** | Thursday, September 13, 2007 2:23:52 PM |
| **Attachments:** | September 14 final comment ltr to IRS.doc |

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Please find attached the Hospital and Healthsystem Association of Pennsylvania's comments on the draft redesign of Form 990 and schedules.

HAP appreciates the opportunity to comment on the Internal Revenue Service's Redesigned Form 990 draft. While we applaud your efforts in developing a new Form 990, which has not been revised since 1979, we have significant concerns about the draft redesign. These concerns include the aggressive implementation date and filing deadlines, as well as the additional cost and burden that will result from the proposed expansion of reporting requirements for the hospitals as well as our own association.

Thank you in advance for consideration of our comments and recommendations. Should you have further questions, please contact Tina Latin-True, Vice President and Controller at (717) 561-5311 or
Melissa Speck, Director, Policy Development at (717) 561-5356.

Melissa N. Speck
Director, Policy Development, HAP
(717)561-5356 Office
(717)512-5275 Blackberry

HAP

THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

September 13, 2007

Internal Revenue Service
Form 990 Redesign, SE:T: EO
1111 Constitution Avenue, NW
Washington, D.C. 20224

***RE: Comments on Draft Redesigned Form 990 and Schedules***

To Whom It May Concern:

On behalf of Pennsylvania's 225 hospitals and health care systems, The Hospital & Healthsystem Association of Pennsylvania (HAP) welcomes the opportunity to comment on the Internal Revenue Service's Redesigned *Form 990* draft. While we applaud your efforts in developing a new *Form 990*, which has not been revised since 1979, we have significant concerns about the draft redesign. These concerns include the aggressive implementation date and filing deadlines, as well as the additional cost and burden that will result from the proposed expansion of reporting requirements for the hospitals as well as our own association. Please note that more technical comments on the core form and its various schedules are attached. Obviously, of particular concern is the Proposed Schedule H, which our member hospitals and health systems would be required to file.

Our concerns can be summarized as follows:

- The filing deadline is far too short and should be extended to tax year 2010 for *Form 990* and all schedules.
- Additional resources/time will be needed in order to complete the Redesigned *Form 990* and the various schedules for our member's hospitals as well as the association itself.
- *Form 990* and other schedules have numerous questions that require substantial revisions or clarification to ensure that the goals the IRS set for itself can be achieved (reduce burden on filing organization, promote tax compliance and enhance transparency).
- Schedule H does not recognize the full value of community benefit provided by hospitals and schedule K would require significant resources to compile the information required to be reported.

We appreciate the opportunity to comment on the redesigned *Form 990* and related schedules, and thank you in advance for consideration of our comments and recommendations. Should you have further questions, please contact Tina Latin-True, Vice President and Controller at (717) 561-5311 or Melissa Speck, Director, Policy Development at (717) 561-5356.

Sincerely,

Carolyn F. Scanlan

CAROLYN F. SCANLAN
President & Chief Executive Officer
Attachment

**The Hospital & Healthsystem Association of Pennsylvania (HAP)**
**Detailed Comments on IRS Redesigned Form 990 and Schedules**

## Scheduled implementation date and filing deadlines

It is important to recognize that the new Proposed Schedule H and other newer expanded disclosures will require significant reconfiguration of existing financial and data record-keeping systems for hospitals. These system changes are critical to ensuring that the appropriate data is captured for accurate completion of the new Schedule H, and in particular for the Part I Community Benefit Report.

The aggressive timeline proposed for implementation of the redesigned *Form 990* would require that hospitals begin data collection and record-keeping effective January 1, 2008. That timeline is unrealistic, especially given the fact that the IRS does not anticipate finalizing instructions, definitions, and worksheets needed to collect the data until mid-2008. Without the requisite instructions, all institutions will find it difficult to compile information in a correct and timely manner.

HAP strongly encourages the IRS to delay implementation of the Proposed Schedule H to allow for appropriate modifications and development of systems necessary to capture the required financial information. It is recommended that implementation of revised forms be made in 2010, which would allow for the requisite systems changes subsequent to the finalization of instructions, definitions, and worksheets to enable appropriate capture of the requisite data.

With respect to the current tax-exempt filing deadlines that are in place, there is significant concern that tax-exempt entities will need to file an extension request annually in order to accurately complete not only the core *Form 990,* but all of the additional schedules (and the various worksheets) that have been added, even if the IRS were to delay the implementation of Schedule H. This seemingly conflicts with the intent of the IRS to reduce reporting burden on filing organizations.

## Impact of proposed expansion of reporting requirements

The Proposed Schedule H includes many components that are either not related to the hospital demonstrating community benefit, or are related to information already provided in other parts of the *Form 990*. It should be noted that the detailed information requested on charity care is already provided in Part I of Schedule H, thus resulting in duplicative reporting. Finally, information related to the hospital's revenues and Medicare and Medicaid payments is also already included in the *Form 990*.

Additionally, the proposed chart on Schedule H, Part II, that relates to billing has no impact on being able to determine whether a hospital has met the community benefit standard. In addition, the chart will impose a significant burden on the hospital with respect to the amount of information and the required personnel resources that will be needed to complete the schedule.

It is important to recognize the need for a balanced approach related to the level of information proposed to be collected, and ultimately, the relevancy of such information. As stated above, the adoption of the redesigned *Form 990* and related schedules will require additional administrative resources to assist in preparation and documentation of these schedules.

An unintended consequence of hospitals having to redirect resources to administrative compliance activities will be the reduction of resources available to carry out their core missions of caring for those in their community. HAP does not believe that was the intent of this effort.

**The Core Form and Schedules Need Substantial Revisions**

Below is our initial list of comments on the core form and other schedules. Many large hospitals and hospital systems will need to fill out as many as 14 schedules, and most will have to fill out at least 8-10. This is an enormous, expensive and time-consuming undertaking for tax-exempt hospitals in Pennsylvania, as well as for ourselves as a not-for-profit trade association which represents hospitals.

Significant revisions and refinements must be made to the core form, schedules and instructions (e.g., the draft Form 990 asks for information concerning materiality and substantiality of certain matters without providing clear guidance or objective criteria). It is recommended that objective standards be included in the instructions.

We think it is critical that exempt organizations be given an opportunity to review the revised set of forms, schedules and instructions in their entirety, with another 90-day review period following the re-draft. The IRS should release the second draft with instructions in 2008, and provide another 90-day review period, with a final form release by December 31, 2008.

It would be a disservice to the entire tax-exempt sector—hospitals in particular—to undertake the first major overhaul of the Form 990 in 25 years without adequate time for review and input. A rushed implementation schedule will inevitably require revisions and modifications that will be costly both to exempt organizations and the IRS, and thus will not result in the desired transparency or reduction of administrative burden.

**1. Core Form**

• The IRS asked for comments on whether "the IRS should preclude group rulings." We understand this request was intended to elicit comments on whether hospitals and other organizations that have a "group exemption" should continue to be allowed to file a group return. Some hospital systems have received group exemptions. If group returns are eliminated, this would result in a significant burden that subverts the underlying group exemption.
• Part I (Summary), Line 6 requires an organization to enter the number of individuals receiving compensation in excess of $100,000. This question provides information of limited use to the IRS since large health care organizations will likely have a larger number of professionals receiving such compensation and small organizations will likely have a smaller number.
• Part I (Summary), Line 7 requires an organization to enter the highest compensation amount reported on Part II, Section A (relating to reportable compensation paid to officers, directors, trustees, key employees, highly compensated employees and independent contractors). Requiring disclosure of the highest compensation amount paid on the summary page of the core form could mislead viewers when read outside of the context of the fuller disclosure required in Part II and Schedule J.
• Part I, Lines 8a and 8b require an organization to calculate total officer, director, trustee and other key employee compensation and then to calculate a percentage by comparing total executive compensation to total program expenses. This comparison metric provides a misleading picture of an organization's operations and should be eliminated from the form.

• Part I, Lines 19a and 19b require an organization to calculate fundraising expenses as a percentage of total contributions and grants. This percentage does not provide helpful information about an organization's operations. Notwithstanding its limited use, organizations should be given an opportunity to explain this percentage.
• Part I, Line 24b requires an organization to calculate total expenses as a percentage of net assets. This percentage is not helpful to understanding an organization's overall operations.
• Part II (Compensation and Other Financial Arrangements with Officers, Directors, Trustees, Key Employees, Highly Compensated Employees, and Independent Contractors), Section A requires information on key employees, which term is defined in part based on the disqualified person concept from the Section 4958 intermediate sanction regulations to include a "person who manages a discrete segment or activity of the organization that represents a substantial part of the activities, assets, income or expenses of the organization, as compared to the organization as a whole." Consideration should be given to defining "substantial part" or including examples in the instructions or glossary to help large organizations determine employees who would fall under the broadened definition. Hospitals could have hundreds of "key employees" if this definition is not clear.
• Part II, Section A requires an organization to list the city and state of residence of each person required to be listed publicly (officers, directors, trustees and key employees). For hospitals and heath care organizations in rural areas in particular, providing this information could be tantamount to providing an individual's home address. The filing organization should be allowed to list the organization's address as opposed to the individual's home addresses, since their service is related to the organization not as an individual.
• Part II, Section A requires an organization to include reportable compensation from "related organizations" for purposes of reporting the compensation of former (within the last five years) directors, trustees, officers and key employees or highest compensated employees. It seems overly burdensome for a large filing organization to be required to track all former directors, trustees, officers, key employees or highest compensated employees over a five-year period when they have had no need to do so in the past. Combining this requirement with a need to survey all related organizations to determine whether any individual in this group is being paid compensation by such related organization requires efforts beyond the value the information would provide. Information on former directors, trustees, officers, key employees or highest compensated employees should look to current year only.
• Part II, Section A requires an organization to use the compensation figures as reported on Forms W-2 or 1099. For hospitals whose tax year is not the calendar year, Forms W-2 and 1099 reporting will result in compensation data that is much more dated than the compensation data currently required. For example, if a hospital's fiscal year ends on June 30, the hospital would file its return on November 15, with compensation data as of December 31 of the prior year.
• Part II, Section B, Lines 5a-f require an organization to report the family and business relationships of officers, directors, trustees or key employees during a five-year look back period. Hospital and health care organizations often have boards of directors with as many as 30 members, and hundreds of contracts. The collection and maintenance of documentation required to respond to these questions will create excessive new burdens for organizations, especially for organizations with large boards of directors. Moreover, the instructions should clarify the duties of organizations to collect such information going forward.
• Part II, Section B, Line 9 requires an organization to report whether any persons listed in Part A receive compensation from any source other than the filing organization or a related organization for services rendered to the organization. In its current form, this question requires organizations to have or acquire access to information that they may not otherwise have. This question should be clarified to address the extent to which an organization is required to seek information regarding such compensation arrangements. Also, if a listed person owns a company that is paid reasonable compensation to perform services, but the person does not receive any payment other than in his capacity as owner of the organization, what amount, if any, gets reported?

• Part III (Statements Regarding Governance, Management, and Financial Reporting), Line 2 requires an organization to report any significant changes to its organizing or governing documents. The IRS should clarify that this question would only cover changes to articles of incorporation and bylaws and not other policies of the organization.
• Part III, Line 3b requires an organization to report the number of "transactions" the organization reviewed under its conflict of interest policy. The instructions or glossary should be revised to include a definition for "transactions." Because responding with a zero or a very high number would create a misleadingly negative connotation, and because any numerical response will have a different meaning depending on the organization and its policy, the question should be revised to ask whether the organization engaged in any transactions that were subject to the policy but were not reviewed under the policy.
• Part III, Line 10 asks whether an organization's governing body reviewed the Form 990 before it was filed. This requirement is overly burdensome, particularly for large hospital systems, which may have dozens of hospitals and related entities for which returns are being filed. The draft form does not provide a definition of "review," which should be added to the instructions or glossary. It is unclear whether an organization can simply provide the Form 990 to its governing body or whether it needs to receive some kind of certification that each member of its governing body has in fact reviewed the form. The instructions should clarify that review by the finance or an equivalent committee of an organization's governing body or the governing body of its parent organization is sufficient if the governing body delegates this function. In clarifying what is meant by "review," the IRS also should consider that boards of directors of public companies are not required to review or certify tax filings under the Sarbanes-Oxley Act.
• Part III, Line 11 asks an organization to indicate where documents are made available to the public. There is no explanation for why this is being asked.
• In addition, IRS should consider providing a disclaimer on the core form that states that some of the items noted are not legally required, but are commonly accepted practices and are not necessarily appropriate or applicable for every organization.
• Part IV (Statements Regarding General Activities), Line 1d requires an organization to report the total amount of contributions received from related organizations. The instructions include as examples of related organizations, "a parent organization or affiliates at the local, state, or regional level." The example is confusing and the instructions should instead use the definition of related organizations from the glossary. Moreover, it is unclear whether all payments to related organizations (except for payments that clearly belong under membership dues, rentals, or sales) should be treated as contributions since there is no corresponding line item under "program service revenue" or "other revenue."
• Part IV, Lines 2a – 2g require an organization to enter a corresponding business code from the *Codes for Unrelated Business Activity* from the 2006 Instructions for Form 990-T for the various line items of "program service revenue." The business codes on 990-T are not broad enough to reflect accurately program service revenue.
• Part IV, Line 1c requires an organization to report contributions from fundraising events. Although the instructions use an example to show that gross income from other than contributions is to be reported on Line 11a, a reference at Line 1c to such amounts reported on Line 11a would be helpful.
• Part V (Statement of Functional Expense), Line 3 requires an organization to report expenses associated with grants and other assistance to governments, organizations, and individuals outside of the U.S. This question does not provide a reference to Schedule F or the threshold for filing Schedule F. These references should be added.
• Part VII (Statements Regarding General Activities), Line 6a requires an organization to report whether it had any tax-exempt bonds outstanding at any time during the year. The instructions should clarify whether this question is intended to encompass bond financing where the 501(c)(3) organization is not the issuer of the bonds but rather the borrower of proceeds of government-issued bonds.

• Part VII, Lines 8a (and the applicable instructions) requires an organization to report whether it conducted all or a *substantial* part of its exempt activities through or using a partnership, LLC or corporation and the aggregate exempt activities conducted through or by such entities involved a *substantial* portion of the organization's capital expenditures or operating budget, or a discrete segment or activities of the organization that represent a *substantial* portion of the organization's assets, income, or expenses as compared to the organization as a whole. Neither the instructions nor the glossary provide a definition, percentage or amount for the term "substantial." It is also unclear whether Lines 8a-8c would apply to passive investments of endowment or reserve funds in partnerships or publicly traded corporations.
• Part VII, Lines 11 and 12 require an organization to report whether it has a written policy or procedure for reviewing the organization's investments and safeguarding its exempt status with respect to transactions and arrangements with related organizations. To the extent the IRS intends to develop sample written policies, IRS should solicit input from members of the tax-exempt sector with respect to the content and form of such written policies.
• Part IX (Statement of Program Service Accomplishments), Lines 3a – 3c require an organization to describe its exempt purpose achievements for each of its three largest program services. This question should be moved to Part I of the form, as it is a key question. Organizations should be allowed as much additional space as necessary to describe more than three key activities. As drafted, 3d also directs organizations to attach a schedule listing other program services.

**2. Schedule A (Supplementary Information for Organizations Exempt Under Section 501(c)(3))**
• Part 1, Line 11f requires an organization to respond whether it has a "written determination from the IRS that it is a Type I, II or III supporting organization." Since most supporting organizations do not have written determinations from the IRS, the question as written is misleading and unfair because the IRS did not actually issue such determinations until this year. The question should allow an IRS determination or "a written opinion of counsel."
• Part 1, Line 11h, column (vii) requires an organization to report the amount of monetary support provided by the supporting organization to the supported organization(s). This question disadvantages supporting organizations such as parent holding companies within a health care system that do not pay out monetary grants or other support payments because they are functionally integrated or otherwise undertake activities in support of their supported organizations. The question should be revised to include the value of non-monetary support.

**3. Schedule C (Political Campaign and Lobbying Activities)**
• Much of the information requested by the IRS on schedule C is already reported to the Federal Election Commission (FEC) and to the IRS on Form 8872 – Political Organizations Report of Contributions and Expenditures. This form follows the FEC's reporting schedule, and, therefore is duplicative.
• The IRS also requires an estimate of volunteer hours on political activities. Additional clarification may be required to limit an association's responsibility to report activities of its board members that are conducting these activities on their own time and not on the organization's behalf.
• Of major concern is the combining of political campaign and lobbying activities on one form. Political campaign work is prohibited for 501(c)(3) organizations, while lobbying activities are permitted. By combining these activities on the same Schedule H can cause confusion and misinterpretation.
• Part II-B requires reporting by an exempt organization, including reporting on (b) paid staff or management and for (h) seminars, conventions, speeches, lectures or any other means. It is not clear precisely what the IRS is attempting to capture under (h) and why the category needs to be so broad. Also, instead of asking for precise amounts, the IRS should ask for a range of hours,

number of employees or other proxies for amounts that would provide the IRS with useful information while making the category less burdensome.

**4. Schedule D (Supplemental Financial Statements)**

• Parts I and III: Passive investments should be excluded from this schedule, and the listing of securities individually is extremely burdensome.

• Part VII (Other Liabilities) requires organizations to describe and list the book value of any other liabilities, including federal income tax liabilities, not reportable in the defined categories on Part VI (Balance Sheet) of the core form. Part VII also requires organizations to provide the text of the footnote to the organization's financial statements that report the organization's liability for uncertain tax positions under FIN 48. Disclosing the text of footnotes relating to uncertain tax positions in isolation could be misleading. Organizations should be given the opportunity to explain such footnotes or to attach their entire financial statement.

• Part XII (Endowment Funds) requires an organization that holds assets in term or permanent endowment funds to provide information for the past five years on fund balances, contributions, investment earnings or losses, program expenditures and administrative expenditures. The reporting burden associated with this question seems to outweigh the usefulness of this information. The five-year look-back period should be reduced or eliminated pending adoption by the IRS of reasonable standards.

**5. Schedule F (Statement of Activities Outside the U.S.)**

• It is unclear whether Schedule F requires that "captive insurance" activities be reported. Since any organization with captive insurance activity is required to complete IRS Form 5471, such reporting should be referenced here, or the organization should be specifically exempted from reporting again on this form.

• Schedule F requires the separate reporting of grants outside the U.S. from grants to domestic organizations and individuals. Many hospitals and health care organizations do not maintain records and reports in a format that would permit them to gather all of the information required to be reported on Schedule F. The required amount of recordkeeping and reporting could discourage organizations from making grants, particularly small ones, to foreign organizations or individuals. Moreover, the data required to be reported on the schedule could potentially threaten the safety and security of organizations and individual grant recipients, therefore Schedule F should not be open to public disclosure.

• It is unclear whether the activities of foreign affiliates of U.S. organizations are covered by Schedule F.

• Part I (General Information on Accounts and Activities Outside the United States), Line 2 requires an organization to describe its procedures for selecting grant recipients located outside the U.S. and monitoring the use of grant funds. The disclosure of an organization's grant making procedures is intrusive for a public document. This question should be similar to Schedule I, which simply asks whether the organization maintains records to substantiate its grant making process.

• Part II (Grants and Other Assistance to Organizations or Entities Outside the United States), Lines 2-3 require an organization to report the number of foreign 501(c)(3) organization grant recipients and the total number of other organizations or entities. This information seems misleading given that most foreign organizations are not formally recognized as 501(c)(3) organizations by the U.S., and the regulatory structure for charitable organizations in many countries is not easily comparable to U.S. requirements.

• Part II, line 1, column (g) requires that non-cash gifts be reported, and that the fair market value be the basis for the reporting. Hospitals should be exempted from reporting gifts of equipment and supplies since there are many such transfers of fully depreciated items.

• Part III (Grants and Other Assistance to Individuals Outside the United States) requires an organization to report grants of more than $5,000 to individuals outside the U.S. Part II (Grants

and Other Assistance to Organizations or Entities Outside the United States) requires organizations to check a box if no one recipient received more than $5,000. Part III should include a similar check-the-box statement to clarify the guidance set forth in the instructions, i.e., that organizations are not required to complete Part III if no one recipient received more than $5,000.

**6. Statement G (Supplemental Information Regarding Fundraising Activities)**

• Schedule G requires an organization to report supplemental information regarding its fundraising activities. The IRS should clarify how organizations should report fundraising activities by related entities, which is a common occurrence within a health system.

**7. Proposed Schedule H**

As proposed, the new Schedule H includes four main components community benefit, billing and collections, management companies and joint ventures, and general/facility information. There is concern that the proposed Schedule H does not recognize the full value of community benefits provided by tax-exempt hospitals. While the Proposed Schedule H recognizes under funding of care provided to Medicaid patients, it does not recognize similar under funding by the Medicare program. Medicare, like Medicaid, does not pay the full cost of care for Medicare patients. For Pennsylvania hospitals, it is estimated that the cumulative value of these underpayments is twice the amount of the cost of care to the uninsured. This results in hospitals, and in part communities, absorbing and compensating for these underpayments as they fulfill their mission to serve Pennsylvanian's health care needs.

It is imperative that Medicare underpayments be included as a community benefit, given the fact that these underpayments represent a real cost of serving elderly patients in communities across Pennsylvania.

In addition, the Proposed Schedule H does not recognize the cost of patient care bad debt expense as a community benefit. Pennsylvania hospitals have implemented programs to establish eligibility for financial assistance or charity care, in concert with their missions, and take appropriate steps to advise patients of their financial obligations and the availability of financial aid or charity care. However, despite their best efforts, patients who have received care may still not identify themselves as in need of financial assistance and fail to pay their obligation. This trend is likely to increase as health plans continue to place greater out-of-pocket obligations on individuals.

As is the case with recognizing the Medicare shortfall, it is important to recognize as a community benefit the full cost of serving patients who require assistance in paying their bills. These patients have received needed care and hospitals have fulfilled their mission in providing that care.

Further, in Pennsylvania, our state's Institutions of Purely Public Charity Act recognizes that community benefit includes charity care and financial aid, under funding by government payers (Medicare and Medicaid), and bad debt at cost. Changes at the federal level to the definitions of charity care will be confusing to the public within Pennsylvania hospitals seek to demonstrate accountability of service to communities.

**8. Schedule J (Supplemental Compensation Information)**

• Schedule J requires an organization to report supplemental compensation information with respect to listed persons from Part II of the core form. There still seems to be confusion about who gets reported on Schedule J, so the instructions should further clarify the individuals for whom such information must be reported.

• Line 1, column (C) requires an organization to report non-qualified deferred compensation. We encourage the IRS to clearly identify on the form whether the deferred compensation amount is reported when granted or vested. Otherwise, the non-qualified deferred compensation is being reported twice. The double reporting occurs when the amounts of unpaid, unvested deferred compensation are reported when awarded and again when they are vested. Eliminating the double reporting will give a more accurate picture of yearly compensation. The double reporting of deferred compensation is a problem under the current Form 990 and the IRS should take this opportunity to correct the confusion. This question also must address how compensation should be reported if the organization is reporting on an accrual basis.
• Line 1, column (D) requires an organization to report the amount of non-taxable fringe benefits provided to the listed persons in column (A). The instructions seem to even require reporting of de minimis fringe benefits, which by definition under the Internal Revenue Code are "so small as to make accounting for it unreasonable or administratively impracticable." The instructions should follow the current Form 990, which allows de minimis fringe benefits to be excluded.
• Line 1, Column (E) requires an organization to report the amount of all expense reimbursements, and allowances provided for expenses, that are not included on a recipient's W-2. It is completely misleading to report such amounts on Schedule J, which is intended to disclose compensation amounts. Expense reimbursements under accountable plans that do not result in income to the recipient should not have to be reported on Schedule J.
• Lines 4 and 5 require an organization to report whether it paid compensation determined in whole or in part by the revenues or net earnings of the organization or a related organization. The instructions should clarify the types of compensation arrangements that would and would not be deemed to be determined in whole or in part by the revenues or net earnings of hospitals or health care organizations.

**9. Schedule K (Supplemental Information on Tax Exempt Bonds)**
HAP is particularly concerned about Schedule K; a number of hospitals have described the burden associated with this schedule as akin to a full-scale audit, costing, potentially, millions of dollars.
• Schedule K requires an organization to report supplemental information for each outstanding bond issue with an aggregate principal amount in excess of $100,000 on the last day of the taxable year. Due to the scope of information required for reportable tax-exempt bonds, the IRS should delay implementation of Schedule K (along with all of the Form 990) until 2010, so that organizations will have sufficient time to complete the analyses required for reporting the new information on the schedule. Also, since the schedule asks for information regarding all bonds outstanding on the last day of the taxable year, no matter how long ago the bonds were issued, organizations may not have all of the requested information because there was no notice at the time the bonds were issued that the organization would be required to report such information to the IRS. Accordingly, the IRS should provide a "grandfather" provision under which information is required to be reported only for bonds issued after the date that the redesigned Form 990 was made public. Also, in light of the IRS' recently announced post-issuance compliance check program, the IRS should consider delaying finalization of this Schedule until the IRS has analyzed the responses to the questionnaires being sent out as part of the program.
• Part I requires extensive information for each outstanding tax-exempt bond issue with a principal amount greater than $100,000 on the last day of the tax year. This section is enormously burdensome and needs to be streamlined. First, the IRS should recognize that much of the information requested here is already available through Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues, which is filed when the bonds are issued. The new schedule should be reconciled with the reporting already required to eliminate redundancy and burden. Part I, columns F and G, in particular, represent a particular burden for hospitals. For example, for bonds with large principal amounts that funded multiple projects, including

buildings and equipment, requiring information on the date that a particular project was placed into service is very difficult and burdensome to provide.

• Part II requires the provision of information on bond proceeds. The instructions for this section should make it clear that when an organization is dealing with a refunding issue it is not necessary to report how the proceeds of the prior issue were spent. Alternatively, the instructions should reduce the burden associated with reporting this information by, for example, limiting how far an organization must go back when a bond is used to refund a prior issue. In addition, the current IRS regulations permit an organization that funds projects with a mixture of equity and bond proceeds to wait 18 months after facilities are placed into service to allocate the sources of those funds to particular costs. That means, at the time an organization may be required to file this schedule, there may not be a final allocation. The instructions for the form should reconcile this inconsistency in favor of delayed reporting.

• Part III requires an organization to report information about private use of tax-exempt bonds. The instructions should clarify that aggregate reporting for private business use is contemplated and the IRS should consider permitting organizations to report private business use as not exceeding a stated de minimis percentage. And, Part III could be streamlined if it allowed organizations to limit the reporting of contracts to those that do not meet the "safe harbors" described in Revenue Procedures 97-13 or 97-14. Question 4 should be re-written, as it does not take into consideration that a hospital may be meeting such “safe harbor” requirements, which would make the percentage computation unnecessary. Also, question 5a, requesting information about all other "use" by other than a 501(c)(3) organization or state or local government is overly broad, as it would presumably include use that is not treated as private use, such as incidental use or use on the same basis as the general public. Additionally, questions 4 and 5 could result in misleading answers, as they fail to anticipate that these percentages may change from year to year and that the proper measure of usage would be the entire term of the bond.

• Part IV requires an organization to report information about the compensation of third parties who provide services related to bond issuances and whether such parties were selected using a “formal selection process.” The instructions should clarify what is meant by a “formal selection process” and should permit organizations to rely on selections that involved advice of bond counsel and/or a qualified underwriter with a reasonable review of qualifications. In addition, a threshold amount for reportable transactions should be added.

**10. Schedule I (Supplemental Information on Grants and Other Assistance to Organizations, Governments, and Individuals in the U.S.)**

Part III requires an organization to report grants and other assistance to individuals in the U.S., if the grant amount is $5,000 or more. This threshold should be increased substantially for large organizations like hospitals. The instructions and the schedule should clarify whether, consistent with the instructions to Schedule F, Part III, organizations need not complete Part III if no individual received more than the new threshold.

**11. Schedule L (Supplemental Information on Loans)**

Schedule L requires an organization to report details on loans to and from officers, directors, trustees, key employees, *highly* compensated employees and disqualified persons. The schedule and instructions should reference “*highest* compensated employees” from Part II of the core form, which is also the defined term in the glossary. The use of the expression “*highly* compensated employee” is unnecessarily confusing in this context.

**12. Schedule M (Non-Cash Contributions)**

The threshold for completing this schedule should be increased to at least $20,000.

**13. Schedule N (Liquidation, Termination, dissolution or Significant Disposition of Assets)**

• Clarification is needed as to whether transfers to a wholly owned limited liability company that is disregarded as separate from the tax-exempt filing organization need to be reported.

• Clarification is needed as to whether transfers for "full and adequate consideration" that are excluded from the definition of "substantial contraction" still need to be reported as a disposition of net assets.

**14. Schedule R (Related Organizations)**

The following comments relate to Part V – Transactions with Related Organizations.

• For multi-hospital systems, Schedule R is extremely burdensome. At a minimum, the definition of "related" needs further review and consideration, as there are many definitions of the term that might have been used.

• Part V requires an organization to report whether it engaged in certain transactions or transfers with related organizations, including related 501(c)(3) organizations. The instructions carve out transactions between 501(c)(3) organizations where the only transactions between the organizations were gifts or grants. This instruction should be revised to allow transfers that are gifts and grants to be excluded, even where the organizations have other transactions such as leasing or services arrangements.

• The definition of "transfer" in the instructions should be revised as follows: A transfer includes any conveyance of funds or property, whether or not for consideration, *except for gifts or grants between related 501(c)(3) organizations.*

• The compliance burden from this section is of great concern to our members. Tax-exempt organizations within a health system typically have numerous arrangements involving the performance of services, leasing or sharing of facilities, equipment or employees, cost reimbursement etc. By way of example, a typical 501(c)(3) health system could have hundreds of transactions to report under Part V. HAP understands that certain questions on this schedule are in response to Section 1205 of the Pension Protection Act (PPA), but the information on transactions between related 501(c)(3) organizations should be limited to transfers that could result in UBIT under the controlled entity rule of Section 512(b)(13). Other transactions between related 501(c)(3) organizations do not raise compliance, exemption, tax or other concerns and should not need to be reported.

• Schedule R goes beyond what is required under the PPA, which at least limits reporting of transfers among "controlling and controlled" organizations. By defining "related" as including brother/sister organizations controlled by the same person or persons, Schedule R requires any exempt entity within a health care system to include all transfers between it and any other entity within the system, which completely expands the already overly broad disclosure required by the PPA. These requirements are completely unworkable in the health system setting and, again, result in the reporting of transactions that do not raise compliance, exemption, tax or other concerns.

• The instructions for column (C) require the amount involved in each transaction to be reported, which is defined as the fair market value of the services, cash and other assets provided by the organization or the fair market value received, whichever is higher. This instruction seems to require even related 501(c)(3) organizations that have cost reimbursement arrangements to determine the fair market value for these arrangements, which creates a significant valuation burden for arrangements that should not even need to be reported.